

# **Transnational Paedophilia and Power Asymmetries: A Study of Germany-Thailand Network of Sexual Exploitation of Children**

*Thesis submitted to Jawaharlal Nehru University for award of the degree of  
DOCTOR OF PHILOSOPHY*

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2018



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**DECLARATION**

I declare that the thesis entitled “Transnational Paedophilia and Power Asymmetries: A Study of Germany-Thailand Network of Sexual Exploitation of Children” submitted by me for the award of the degree of Doctor of Philosophy of Jawaharlal Nehru University is my own work. The thesis has not been submitted for any other degree of this University or any other university.

  
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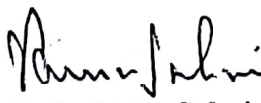
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*Dedicated to Prashant,*

*Both my Mothers and Fathers*

*Whose love, affection and support stands before me as a  
constant source of motivation in every walk of Life.*

## Acknowledgements

I would like to express my earnest appreciation and gratitude to my doctoral supervisors, Prof. Varun Sahni and co-supervisor Prof. Jayati Srivastava. Prof. Sahni is the real motivating force for this project since its start to finish. He stood by me in my tough times and his constant perusal, constructive criticism, support and encouragement is reflected in my work. His critiques and keen interest in my academic journey has made me reach where I have. His knowledge and precision improvised my writing skills at several stages of thesis. It will be incomplete if I do not thank my supervisor's wife Mrs. Sylvia for providing me encouragement during the weak times of Phd submission. Prof. Jayati Srivastava who co-supervised my work instilled confidence in me.

I would be doing injustice if I do not acknowledge the pillar of support that the faculty members of the Centre for International Politics, Organisation and Disarmament (CIPOD) have been during the course of this journey. Their enriching classroom lectures, formal and informal interactions have helped me in improving the quality of my thesis. I am grateful to each and every one of them.

In Thailand, Donna and Tareekh hosted me with great vigour and enthusiasm. The major contribution regarding Thai state's approach to paedophilia and its outcomes on Thailand came from my informal interview with Mr. Alistair I. Gretarsson, Chief of Communication, UNICEF, Thailand. A large part of this thesis is indebted to the people at TAT and Royal Thai Police. Several people guided me in this process and helped me get access to documents and crucial information. The Chiang Mai University is full of books which helped me gain a pool of information about my topic. Keeping it anonymous, I would like to thank all the children, sex workers, and pimps of brothels who spoke to me about several important points of my research.

I am grateful to a number of people who agreed to discuss this project and share their ideas: Prof. Sarah Goode, Prof. G.N Trivedi, Dr. Amphoran Namatra and Prof. Ashok Acharya, Prof. Dr. Cilja Harders for providing philosophical directions to my research. During the course of my thesis, I was fortunate to visit Thailand and received help from several sources, University Grants Commission (UGC), Tourism Authority of Thailand, the Department of Political Sciences at Stuttgart University, Department of Philosophy and Humanities, Free University of Berlin, the NGO "Kein Täter werden" (Don't Offend). Finally, the Jawaharlal Nehru University and the Indian Council for

Social Science Research (Delhi) for the institutional and financial help given at different stages of my research work.

Let me also thank the staff of Jawaharlal Nehru University library, the library at Delhi University, German Embassy, The Royal Thai Embassy, Teen-Murti Library I.C.W.A library, and IDSA for kind cooperation and assistance. A special mention about German Universities like Leipzig University, Bavarian State Library, Frankfurt University Library (Central Library), Saxon State library, Dresden, Albert-Ludwigs-University of Freiburg need to be made as they helped me access their library from India. No thesis is complete without the help and assistance of CIPOD staff: Ms. Roshni Rawat and Mr. Ajay Mishra.

Prashant has been the strongest point in this endeavour. He has encouraged me to complete my work on time. This work would never be the same without his patience, love, support, care and motivation. He has been the man behind the entire process, in thick and thin, both through words and silence. I really thank them for being there and wish that someday I become worthy of his dedication towards me. I will be failing in my duty if I do not thank both my fathers and mothers. Despite all my marital obligations four of them have supported me relentlessly to complete my PhD in time. All my family members, cousin sisters, brother, Bhabhi, brothers-in-law, nephew and nieces (Ayushi and Shachi) have stood by me in very difficult times. Divya and Preeti di have always motivated me, taken care of my health and prompted me to continue despite all the existing challenges. Pratik and Nishant, friend cum brothers who have been a part of this journey by unconditionally supporting me. Saloni, Md, Praveen Yadav, Aashish Bhaiya are the people who hold a special place in my life.

My heartfelt love goes for all my lovely students and all others who have supported me in completing my thesis on time. The frustrating process of my doctoral project was eased by the continuous ground experienced suggestions of Amrit. She has been available at all times and helped me in her own unique ways. For the prayers, enthusiasm and mental support Nikita Surana, Mehak Wadhwa, Shalini Mutreja and Manickdeep Masih are people who owe special thanks and love. I need to give special thanks to Smriti Sabarwal, Vishal Sagar and Anupama Tiwari for handling PHD related stress through the group 'PHD Survivors'.

Finally, I take complete responsibility of all the mistakes and drawbacks in the thesis.

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## **List of Acronyms and Abbreviations**

ACHR	American Convention on Human Rights
ACHPR	African Charter on Human and People Rights
ACRWC	African Charter on Rights and Welfare of Child
AHRC	African Human Rights Commission
ASEAN	Association of Southeast Asian Nations
BKA	Bundeskriminalamt
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CCFRG	Civil Code of the Federal Republic of Germany
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CEPOL	European Police College
COE	Council of Europe
CRPD	Convention on the Rights of Persons with Disabilities
CSEC	Commercial Sexual Exploitation of Children
CSR	Corporate Social Responsibility
DKSB	Deutscher Kinderschutzbund
ECHR	European Convention on Human Rights
ECOSOC	United Nations Economic and Social Council
ECPAT	End Child Prostitution, Child Pornography and the Trafficking of Children for Sexual Purposes
EU	European Union
Europol	European Police Office
FRG	Federal Republic of Germany
GDP	Gross Domestic Product
GNI	Gross National Income
GPAT	Global Program against Trafficking in Human Beings
HDI	Human Development Index
HIV/AIDS	Human immunodeficiency virus/acquired immunodeficiency syndrome
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP1	Optional Protocol to the International Covenant on Civil and Political Rights
ICCPR-OP2	Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICESCR – OP	Optional Protocol to the Covenant on Economic, Social and Cultural Rights
ICD	International Classification of Disease

ICT	Information and Communication Technology
ILO	International Labour Organisation
IMF	International Monetary Fund
IOM	International Organization for Migration
IPEC	The International Program on the Elimination of Child Labor
IR	International Relations
IPE	International Political Economy
ISP	Internet Service Providers
JWG	Youth Welfare Act
LKA	Landeskriminalamt
KOK	Kok-Gegen-Menschenhandel
NAMBLA	North American Man Boy Love Association
NCPM	New Child Protection Movement
NGO	Non-governmental organisation
NSO	National Statistical Office
OAU	Organization of African Unity
OECD	Organization for Economic Co-operation and Development
OP-CAT	Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OP-CEDAW	Optional Protocol to the Convention on the Elimination of Discrimination against Women
OP-CRC-AC	Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict
OP-CRC-IC	Optional Protocol to the Convention on the Rights of the Child on a communications procedure <sup>14</sup> Apr 2014
OP-CRC-SC	Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
OP-CRPD	Optional Protocol to the Convention on the Rights of Persons with Disabilities
PCA	Protection of Children's Act
P.I. E	Paedophile Information Exchange
PCFRG	Penal Code of the Federal Republic of Germany
SAARC	South Asian Association of Regional Co-operation
SGB	Social Code Book of Germany
TAT	Tourism Authority of Thailand
TNC	Transnational Corporation
UN	United Nations
UNCRC	United Nation Convention on the Rights of the Child
UNCTAD	United Nations Conference on Trade and Development
UNDHR	United Nations Declaration of Human Rights
UNESCO	United Nations Educational, Scientific, and Cultural Organization
UNICEF	United Nations International Children's Emergency Fund

UNODC	United Nations Office on Drugs and Crime
UNWTO	United Nations World Tourism Organisation
UK	United Kingdom
USA	United States of America
USSR	United Soviet Socialist Republic
WB	World Bank
WFCLC	Worst Form of Child Labour Convention
WHO	World Health Organization
WWI	First World War
WWII	Second World War

# CHAPTER 1 – INTRODUCTION

## Background

The *raison d'être* of all states is to protect the most vulnerable and defenceless segments of their societies, which obviously includes the children. Despite unremitting, unanimous and persistent efforts by states and other organisations, absolute prevention of child sexual abuse has not been possible. This study analyses why certain states, despite having the ability to restrict outsiders from intruding into their sovereign territory, are unable to protect their own minor citizens from exploitation by paedophiles. This study problematises the Germany-Thailand network of child exploitation that clearly highlights an asymmetrical nexus of power, wealth and the use of the two for control and exploitation.

Furthermore, this study explores why some states are compelled to subordinate themselves to the logic of market forces and cater to their demands. The expanding politics of transnational paedophilia has put immense pressure on states to take tangible action. Most states monitor this problem while others keep trying to curb it within their borders. An economically weaker state needs to be proactive, resilient and invest scrupulously to protect vulnerable sections of its society from external predators and to mitigate the negative consequences of a globalising world. However, certain states fall prey to perceived compulsions of economic growth, development and progress (Ohmae 1990, 1995; Sassen 2002). Thus, this study problematises the commercialising ills of market forces and their adverse impact on children.

The phenomenon of globalisation has become the buzzword of contemporary international politics. Its political, cultural, social and economic incarnations have touched every aspect of human life and society (Beck 1999). A wide range of scholars have argued that the present world order is restructured due to global and transnational activities (Lie 1996). Several others have denounced such a worldview and instead focussed on the resurgence and dominance of powerful states within a capitalist economic system (Rodriquez 1998). Considering that globalisation is a distinguishing trend with both positive and negative impacts (Bhagwati 2004), the study analyses the emerging forms of power asymmetries and exploitation from the perspective of international political economy (IPE).

It is evident that within a strong operational transnational market, wealth gets unevenly distributed (Strange 1996). This unequal distribution of dividends, both at the international as well as domestic front, leads to financial imbalances (Longford 1995). Further, this creates asymmetries based on wealth which compels weaker sections of society to cater to the needs and demands of the privileged (Blyth 2009). The question of power then becomes crucial in looking at this imbalance. Since a country has sovereign rights over its territory, this study critically analyses the reasons why certain countries are not able to curb certain economies and technologies of exploitation.

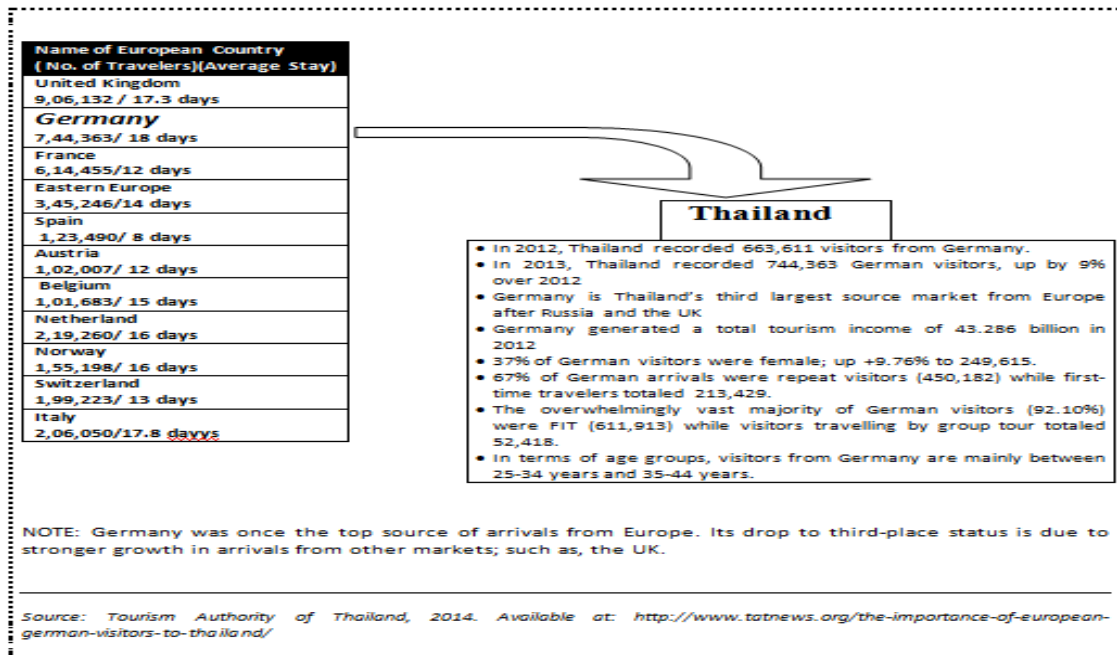
The focus of this study is to analyse how networks of child abuse exist and operate in countries. Across the world, children constitute 40% of the total world population. It is a universally accepted norm that child sexual abuse reduces children to mere objects and disintegrates the personality of a child. The United Nations General Assembly (UNGA) adopted the Declaration on the Rights of the Child (UNCRC) in 1989. After repeated deliberations and arguments, it was unanimously agreed that the charter would encapsulate four basic rights to all children: right to survival, right to protection, right to development and right to participation (UNCRC 1989). The present study strongly validates and supports the role of states in protecting child rights against sexual abuse (Campbell 1992: 22). It highlights the role that states play in defining norms against child sexual abuse. Thus, child rights against sexual abuse are not marginal; increasingly detailed and strong institutional mechanism exist to ensure protection of children (Chidley 1994).

However, the new trends in transnational paedophilia as a consequence of globalisation has raised crucial questions pertaining to the relationship between power (state) and money (market). Transnational paedophilia has become a crucial yardstick to measure asymmetries based on power and money. It pushes us to explain why such 'flows and networks' emerge and how they find markets to satisfy their needs (Ennew 1996). Undoubtedly, paedophilia is not a phenomenon occurring only in bracketed pockets or compartmentalised borders of the world. Paedophiles are everywhere and exist in all societies. Indeed, several paedophile networks exist across the world. Why are certain states unable to curb this menace and ensure protection to young children? Is cheap sex, fragile laws and corrupt governments the reasons for attracting paedophiles from economically wealthier parts of the world to their weaker counterparts? At the

international level, developed and developing countries have differing concerns. On the one hand, developing countries face acute poverty and put emphasis on development at any cost. They are riddled with corruption, malpractices and instability (Strange 1999). The historical legacy of colonialism makes them far more vulnerable.

Despite adherence to international norms against sexual abuse, a country like Thailand is home to the highest number of cases reported for child sexual abuse. In the global sexual marketplace, Thailand is an attractive, fascinating and one-stop destination for people of all age groups. The Tourist Action Plan, 2018 is created by the Thai Tourism Ministry with a vision to increase the influx of tourists from around the globe as compared to earlier records. In 2017, Thailand attracted over 3,12,242 visitors from Europe, a number way beyond all other continents clubbed together (TAT 2017). Though several laws have been articulated to curb sex abuse of children by tourists, the application of strict compliance with minimum standards for the elimination of child sexual exploitation is grossly violated. Moreover, weak law enforcement, inadequate resources, absence of education and inability to be update with one's legal rights forces children to take up this easily available source of income (WHO 2013). On the one hand, developed countries lay the rules of global economy in terms of governance and infrastructure and have strong norms of child protection against sexual abuse. On the other hand, people residing in economically developed countries engage in transnational sexual exploitation of children, one of which is the Germany-Thailand network.

Germany is one of the developed economies of the world. The German criminal code dealing with child sexual abuse, signed in 2001, is committed to the implementation of strong measures against perpetrators of abuse. Several guidelines, policies and strong legal measures are drafted and implemented to ensure the non-violation of child rights in order to offer protection to children against sexual abuse. Germany has very few social taboos. It is a highly open society with liberal norms towards different aspects of social life. Prostitution is legally recognised in Germany and transgender movements have managed to create a space within the society (Ackers 2002). However, within this liberal environment German paedophiles end up feeling that they are being victimised by society for having questionable sexual inclinations.



**Fig. 1.1: European Travellers to Thailand**

Source: www.mots.go.th- Tourism Authority of Thailand statistics

According to Tourism Authority of Thailand (TAT), in 2017 the largest number of tourists from Europe were from Germany (TAT 2017). Moreover, these tourists not only visit Bangkok but travel to southern beaches (ECPAT 2007) which have been declared as red-light areas. This is happening although both Germany and Thailand are signatories of all the major international treaties and uphold the spirit of law against child sexual abuse and its perpetrators.

This research highlights the manner in which global forces compel developing countries to adapt to market needs. It also investigates whether the laxity of norms, rules, regulations and laws operating in developing countries make paedophilia more pervasive and rampant? The study analyses the emerging forms of exploitation among states. By doing so, it modifies the earlier existing views by arguing that the emergence and existence of transnational paedophilia reveals asymmetry in global world order. The perpetrators in economically strong countries are able to access victims in countries with weaker economies or those who generate a lot of their revenue from tourism. The market and the state are to be seen as equal partners in such networks. Thus, the study claims that contemporary globalisation as a process is both advantageous and problematic. While it connects countries to share benefits and resources, at the same time it reconfigures peoples, images, flows and networks in such a way that it leads to unequal global relations.



This chapter contends with four main ideas. First, globalisation has contributed significantly to the emergence of transnational paedophilia. Secondly, the norm of child rights protection against sexual abuse has been strengthening in international and domestic laws. Thirdly, as negation of the second argument, such global norms are only partially successful in dealing with the problems of paedophilia. Finally, from the perspective of IPE, perpetrators in economically strong economies find easy accessibility to victims in their weaker counterparts.

The present body of literature has immense gaps with respect to looking at plausible explanations to political developments in international relations. In the quest to examine the exploitation emerging out of the political economy of transnational paedophilia, we must first delve into inadequacies in the present body of literature. For this reason, the study focuses upon the contours in which these concepts have interacted in the global arena. As mentioned in the introductory section, globalisation is a multi-dimensional process. The present study concerns itself with certain unintended but pervasive implications arising out of the interactions between developed and developing countries through paedophile networks which are often overlooked (Castells 1996). It raises questions that are fundamental but often ignored with respect to the understanding of international politics. Firstly, does the emergence of transnational paedophilia re-establish a politico-economic explanation of globalisation rather than a cultural explanation? Secondly, in what way can one locate the transforming forms of exploitation explicit in actions taken by states in protecting children? Thirdly, how do global forces act together in reconfiguring power hierarchies and highlighting the asymmetrical relations among the countries of the world?

#### *International Norms on Child Protection*

The existing literature on globalisation neither discards the relevance of states nor does it call for a greater role for markets in a globalised world. To put it differently, the literature recognises the relative importance of states as well as market forces even under the conditions of neo-liberal globalisation. Globalisation is not a one-dimensional or monolithic phenomenon (Beck 1999). Globalisation, like any other phenomenon of its scale, is a double-edged sword with both benefits and disadvantages. Globalisation has become some sort of a broad template of our times. It is indeed one of the most discussed and debated issues in the field of social sciences (Bhagwati 2004; Biswas 2002). An increasing predilection is seen on the part of the social scientists to view a

particular issue in the light of globalisation. Scholarship relating to globalisation has proliferating significantly. Without an iota of doubt, it can be said that the debate concerning globalisation has enriched various disciplines of social sciences.

David Held and Anthony McGrew (2003) have described political globalisation as the shifting reach of political power, authority and forms of rule. Political decisions in one part of the world can have worldwide ramifications. Political space is increasing as several non-state actors or transnational bodies, such as multinational corporations, transnational pressure groups, transnational professional associations, social movements and so on are taking a proactive role in global politics (Boyden 2006). Effective political power is no longer the monopoly of nation states, rather it is diffused and shared at national, regional and international level. Political globalisation involves a complex de-territorialisation and re-territorialisation of political authority through international norms (Held and McGrew 2003).

Within the global scenario, several stakeholders and actors participate in giving shape to international politics. However, from the IPE perspective, the political interaction between states and markets plays the most important role in influencing the former to generate space for struggle, debates and negotiations (Elliot 2010).

A plethora of issues like climate change, pollution, terrorism, human rights etc. are coming up which require global cooperation for their effective resolution (Clark 1999). In recent years, norms for child protection against sexual abuse have increased and consolidated into strong international legal enforcement mechanisms.

A child's right against sexual abuse is one of the most debated topics at all levels of international community. Several scholars have engaged themselves in looking at domestic and international norms (Finnemore 1996; Finnemore and Sikkink 1998; Klotz 1995). They have tried to look at the way these norms get created and ideas spread across the world. As Risse-Kappen (1994: 18) puts it, 'ideas do not float freely' in international environment but they affect domestic politics and seek to bring change (Finnemore and Sikkink 1998: 22).

As per the existing statistics, there is a general agreement that violation of child rights to protection against sexual abuse is one of the most heinous consequences of globalisation (UNCRC 1989). The existing literature has not successfully answered questions regarding the role of developed and developing states in dealing with this

problem. International deliberations have multifaceted objectives in carving out norms against sexual abuse (Evans and Mooney 2007). On the one hand, it focuses on the prosecution of nationals for crimes of child sexual exploitation, whether committed domestically or internationally (Gilpin 2002). On the other hand, it focuses on rights of workers and applies universal labour standards to children working in Thai brothels. It also focuses on compelling member states to review their laws and judicial procedures concerning child abuse (Gilpin 2003).

The international standards regarding the protection of child rights clearly outlaw sexual abuse (Clark 1999). As per the existing literature, it is a moral as well as legal responsibility of all sections of society to provide security to children (Cohen 2002; Coles 2005). The European Union has released a directive rejecting all forms of sexual abuse of children as a punishable and criminal offence (EU 2011). There are several obligatory treaties drafted at the international platform to deal with the menace caused to children. UNCRC is the most significant initiative taken by 193 member-states who are all signatories to this treaty. The two most important clauses namely, Articles 34 and 35 of the UNCRC compels all states to initiate procedures and mechanisms to ensure safeguards over children against all forms of exploitative processes especially from sexual abuse and exploitation. This includes outlawing the coercion of a child to perform sexual activity, the prostitution of children, and the exploitation of children in creating pornography. However, violation of these norms and obligations has been witnessed at the level of state implementation (UNESCO 1999).

International and regional organisations condemn and criminalise sexual abuse. Moreover, similar sentiments are also reinforced by international non-governmental and multi-national bodies. They state that children cannot consent in sexual activity with adult as it is immoral and unacceptable behaviour (ECPAT 2011). As per the United Nations World Tourism Organisation's (UNWTO) Global Code of Ethics for Tourism:

Tourism activities should respect the equality of men and women; they should promote human rights and, more particularly, the individual rights of the most vulnerable groups, notably children, the elderly, the handicapped, ethnic minorities and indigenous peoples; ... (UNWTO Article 2, Clause 2)

The exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism; as such, in accordance with

international law, it should be energetically combatted with the cooperation of all the States concerned and penalized without concession by the national legislation of both the countries visited and the countries of the perpetrators of these acts (UNWTO Article 2, Clause 3).

Thus, strong international negation of child sexual abuse definitely underlines one of the positive effects of globalisation. Global concerns have tried to lessen exploitative processes by ensuring strong norms and rules (Beck 1999). The international community is extremely sensitive to the concerns of child rights protection against sexual abuse. Theoretically, both at the international and domestic level, norms for child protection from sexual abuse have been invoked. However, their implications have varied and different effects on countries as they are non-binding upon signatories (Cock 2006: 259).

Therefore, sexual oppression, exploitation and marginalisation of children by adults remains prevalent. In fact, contemporary globalisation has engendered newer pattern of exploitation of children in different geographical locations. What makes this form of exploitation possible? Why are states unable to monitor and effectively deal with it?

#### *Transnational Paedophilia in the Age of Technology*

The term paedophilia was used for the first time in 1886 by Richard Krafft-Ebbing (Krafft-Ebbing 1891). Since then it has been used to refer to a category of persons who gain sexual gratification from fantasising about or engaging in sex with children. This sexual orientation potentially violates children's right to protection against sexual abuse. Traditionally, gratification of sexual want has always been between two consensual adult partners belonging to identities based on sex. In the era of globalisation, social identities and affiliations have broadened to encapsulate Lesbian, Gay, Bisexual and Transgender rights (Gledhill 1999). Paedophile groups find these developments as a ground to negotiate their own demands. David Finkelhor (1986: 281) defined paedophilia as a psychopathological disorder where an adult is 'predisposed to use children for his or her sexual gratification'. Over the years several material conditions and social contexts provided the possibility of its emergence as a politically relevant subject of enquiry (Brown 1999).

Paedophilia is on the rise across the world (Storr 1974). However, statistics show an alarming discrepancy in numbers between developed and developing societies. Since the 1950s, several activist groups have operated as organisations propagating for

paedophile rights. These groups originate in developed countries like Australia, Belgium, Canada, Denmark, French, Germany, Italy, Netherlands, Norway, Switzerland, United Kingdom and United States of America (USA). The North American Man Boy Love Association (Nambla) website states that it is a political, civil, and educational organisation whose goal is to end the extreme oppression of men and boys in mutually consensual relationships. According to the Nambla, some of the organisation's primary objectives include supporting and promoting man/boy relationships. They state that consensual relationships are not harmful for a child and do not tantamount to sexual exploitation (Gray 2004; Held et al. 1999). Further Nambla puts forth its adherence to age-of-consent reforms by justifying that this improves the overall personality of the child (Nambla n.d.).

The advocates of paedophilia underline that child sexual abuse does not always cause harm to the children (Rind et al. 1998: 17). From the late 1950s to early 1990s, several paedophile membership organisations advocated age of consent reform to lower or abolish age of consent laws (Brown 1999: 108) as well as for the acceptance of paedophilia as a sexual orientation rather than a psychological disorder and for the legalisation of child pornography (Brewer 1987: 26). The efforts of paedophile advocacy groups did not gain any public support and today those few groups have either been dissolved or have only minimal membership and have ceased their activities other than through a few websites (Corwin et al. 1987: 112). Despite strong legal mechanisms, paedophiles seek out children. They move across borders, where they find easier access to children to satisfy their demands and needs.

Child sexual abusers are of two types. There are those who sexually exploit children when given the opportunity to do so but do not necessarily seek out children for sexual purposes, both within and outside their native country, and there are others who travel, both within and outside their countries, to exclusively seek out sexual activity with children close to or below the age of puberty (Cynthia 2008). The focus is more on the second category of child sex paedophiles. These paedophiles argue that young people's natural and intrinsic rights must be acknowledged and safeguarded in both law and culture. According to these groups, guardians cynically represent themselves as the sole legitimate and moral caretakers of children and strip the kids of their sexual rights. Further, as put forward by these groups children have an innate desire to satisfy their sexual fantasies which are curtailed by social norms and guidelines (Nambla n.d.).

Global spread of technology has changed the dimensions of child sexual abuse. It has transmuted its earlier one-to-one association into a virtual world of exploitation and abuse (Milner 2005). Technology and communication have a dual role to play in the life of people. While communication technologies have served as a permissive link between people of the world (through social networking sites, blogs and forums), it is misused by paedophiles to exploit children across the borders. On the one hand, it serves as the interlocutor between perpetrators, sellers (victims), policy makers and other stakeholders. On the other hand, it serves as an easy route for paedophiles to access information and material through internet pornography.

The acceptance of social identity is a pre-requisite to ensure a smooth engagement within any society. In this regard, Kwame Appiah analyses three core elements of social identity. Social identities, that are sometimes officially recognised, raise questions for ethics as well as politics because of these three core elements. First is the availability of terms in public discourse that are used to pick out the bearers of the identity by way of criteria of ascription, so that some people are recognised as members of the group: women, men, blacks, whites, straights, gays etc. This tends to falter in case of paedophiles who constantly aspire recognition but are always rejected. Second is the internalisation of those labels as parts of the individual identities of at least some of those who bear the label. Third is the existence of a particular pattern of behaviour towards those who bear a particular label. According to Appiah, this paradigm of social identity matters for ethical as well as political life of an individual. The demands and the nature of operation within paedophiles makes their identity abject as ethical members of society (Appiah 2007).

#### *Globalisation and Asymmetrical Global Relations*

Globalisation is not a one-dimensional or monolithic phenomenon. Globalisation is like a double-edged sword from which are derived both benefits and disadvantages. This dual role can be observed while examining the global spread of paedophilia. The rationale of the argument cannot be denied. It is true that globalisation has facilitated the rise of the network society. However, the network society has enabled the horizontal integration of the world across territorial borders. In other words, it resembles a de-territorialised phenomenon (Przeworski 2003).

Fredrich Kratochwil's (2006) aim is to understand and explain the tension between the virtually universal recognition of territorial sovereignty and the erosion of traditional notions of territoriality given the proliferation of transnational relations and interdependence (Kratochwil 2006: 16). While he does not explicitly define what he means by 'state' and territorial sovereignty, one can assume it to mean the Weberian understanding for the former wherein the state is an entity which has the 'monopoly of the legitimate use of physical force within a given territory' and the latter as a recognition of this right of the state within its territory (Weber 1999) and freedom from external interference.

External powers like the non-state authorities and organised crime engaging in sex economies can pursue narrow economic and political interests as they generally create demands in the developed states and compel weak states to survive on these demands (Strange 1996). Thus, given international norms that prevent the expiry of any state (through annexation etc.), powerful states exploit weaker ones and subject them to different kinds of regulations. To cite the example of Germany and Thailand, Germany has strong visa norms for all countries, especially developing countries. There is a tedious visa application process with a long form requiring several details (Henderick 2003). Also, there is an application fee of 60 Euro which all the more restricts many Thai citizens from travelling to Germany for holiday. On the other hand, as of November 1, 2017 travellers holding UK, US, Japanese, German, French, Canadian and Italian passports have 30-day free visa to visit Thailand. The application form is simple and easy. The laxity in the application process is the chief attraction to Germans, apart from the unregulated service industry of tourism in Thailand.

As Englund (1998) argues, lack of inadequate regulation and legal provisions communicate to sex offenders that they can continue to abuse with impunity. Although existing laws are meant to safeguard children against sexual violence, evidence suggests that they seem to have fallen short in doing so in developing countries. Developed countries have strong legal enforcements to deal with convicted paedophiles (Rao 1999). Although these laws are punitive, they are not restrictive. Despite continuous efforts by the international community, an effective mechanism to address child sexual abuse in developing communities has not been possible. The reason for such a stand lies in the fact that globalisation has made accessibility to children in developing societies easier (Rudra 2002). Further, it also underlines the complex

politics of interdependence between developed and developing economies under the need of market forces, subjecting the weaker countries and their people to different kinds of exploitation. An instance of this would be Thailand catering to the need of Germans and other paedophile travellers.

As made explicit in utilitarianism, exploitation is the use of someone or something as a means to an end. In the arena of global economic relations, exploitation is operational both at the macro and micro levels. In other words, theories of exploitation seek to explain state-market dichotomies arising out of international structural necessities and constraint. Exploitation has been a central element and key feature to human interrelations. However, the diversity in literature clearly underlines changes in its contours over a period of history. According to scholars, globalisation subjugates all forms of exploitation to the economic rather than the political realm.

Tracing Marx's analysis of exploitation within the capitalist framework, scholars seek to explain the ways in which developing societies are subject to control by developed counterparts. The pronounced rise of exchanges and demands posit situations of exploitation of poor countries by rich capitalist ones or by transnational corporations (TNCs). Developing countries have been making frantic efforts for economic independence and development. The international economic order lacks stability due to internationalisation of capital. Several anomalies exist in the patterns of development that are pursued and preached. According to Will Kymlicka, '(Capitalist) social relations ... are exploitative, not only in the specific sense of extracting surplus labour, but in the more general sense of using someone as a means, utilizing her to detriment as a way of promoting one's own good' (Kymlicka 1989: 146) In this regard, developed societies ensure that children in their community are strongly protected but do considerably less to prevent the flow of sex offenders to developing countries, although it is known or at least suspected that they would sexually exploit children in other jurisdictions.

There are arguments that violence has reduced in recent years (Pinker 2011: 261). However, this notion is seriously challenged in one particular form of violence, sexual violence against children. All over the world horrifying incidents and forms of sexual abuse are rampant. Even in this regard, rates of violence are unequal among developed and developing countries. If one looks at the figures, Germany reported about 3,000 cases of child sexual abuse between 2013-2017 (ECPAT 2017), although mapping the



full extent of child sexual abuse and exploitation in Europe remains an unmet challenge in comparison to Thailand, where 20,000 of children were victim of sex predator between 2013-2017 (ECPAT 2017).

Germany has an active legal framework in dealing with child violence. Several mechanisms have been devised and carried out to ensure protection of children, both on the street and within homes (Marshall 2000). Several statistical researches have highlighted the sexual exploitation of children across the world by Germans. In an alarming estimate, it was found that Germany contributes highest to the global demand of child sex tourism each year (Clift and Carter 2000: 68). Several documented reports show that main destinations for a German to holiday include developing countries in Africa, Central and South America, South and Southeast Asia and Eastern Europe (ECPAT 2007). The main destination for travel is Thailand where 23.51% convicted paedophiles or sex offenders travelled (EC 2006).

Thailand has enacted various extra-territorial laws (these are detailed in Chapter 4). As such, law enforcement agencies are able to prosecute their citizens for crimes (against children) even if they are committed outside of the country. Many laws do not require that the act for which they are charged within their own country be a crime in the country where the act was committed. Yet, Thailand has not been able to filter perpetrators as strongly as Germany (Lampe 2002). There are strands and evidences of an inequality between the two societies. Economic disparities as well as social and cultural norms have restricted attempts by Thailand, in contrast to Germany, to prevent the sexual abuse and exploitation of children.

## **Definition, Rationale and Scope**

Several essential concepts have been used in this research. The term transnational paedophilia refers to networks of adult members of society who work together for sexual access to children, both at the national and transnational level. Paedophiles are adults who gain sexual gratification from fantasising about or engaging in sex with children. There are several sub-categories of paedophilia like infantophile or nephophile (attraction to children below 5 years of age), hebephile or ephebophile (attraction to children between 11-14 years of age) and pedohebephile (a combination of attraction towards children below 18 years of age). For the purpose of this study, the terms have been clubbed together under the terminology 'paedophile'. Paedophile

organisations are therefore consistently lobbying for abolition of age of consent laws and allow sexual rights to children. Just as all child sexual abusers (for example, someone who supports child marriage) are not paedophiles, not all paedophiles, (for instance, a person who is sexually attracted to children but abstains from sex) are child sexual abusers. These qualifications notwithstanding, the two terms – ‘paedophile’ and ‘child sexual abuser’ – are often used synonymously.

Globalisation refers to a process where the dynamics of territoriality is being transcended. In the globalised era, physical boundaries may only get outwardly transcended, but the institutional apparatus of states and society transforms in a very complex manner under the relational interlink between power and money.

By child sexual network the study refers to global market based on child sex tourism and pornography that sets illegal chains of demand and supply which are spread across geographical locations.

The study examines the changing contours of international relations. In this regard, three rationales can be advanced. Firstly, in recent years, the conventional belief that actor, structure and institution centric analyses explain politics at international level gets challenged. With increasing global forces like ‘flows and networks’, ‘images’, ‘money’ and ‘power’ add new dimensions to explaining behaviour in the international realm. Thus, the study problematises the existing explanations in the field of international relations and tries to explain global politics through a study of transnational paedophilia.

Secondly, it has been widely acknowledged that development creates hierarchies between states. The emergence of transnational paedophilia has led to the growing recognition that child rights issue transcends state boundaries and merges with markets. Thus, the study seeks to explore how processes and demands in one part of the world influence governance and relations in other parts of the world through markets, and how conditions of development impinges upon practices of exploitation.

Thirdly, the study attempts to relook at the idea of child rights. The norms on child rights claim universality. However, globalisation challenges the idea of ‘childhood’ and ‘child rights’ as perceived in international universal understanding. Such interpretations and understanding overlooks several considerations like regional differences, economic constraints and socio-cultural bearing in constituting discourse on children. The study

attempts to explore the changing discourse on child rights as opposed to the mainstream understanding of the same. By looking at understanding of childhood and child rights from several viewpoints, the negative impact of global and social forces gets revealed. Transnational paedophilia needs to be regarded as a crucial yardstick to measure asymmetries based on power and wealth. Several paedophile networks exist across the world, yet the scope of this study is confined to the Germany-Thailand network of child sexual exploitation. Developed countries in general have a thriving sex industry to cater to the needs of its people. Germany has a legally recognised prostitution industry since 2000. Being an open society and an economically powerful nation, Germany has created a strong legal institutional mechanism to curb child sexual abuse. German laws are stringent and varied in their scope. They adhere to international norms. Germany is a signatory of all major international treaties to protect child rights against sexual abuse. However, despite being a unique case among other European countries, German paedophiles time and again look to Thai sex markets to procure cheap sex with children.

## **Research Questions and Hypotheses**

The study seeks plausible answers of questions like:

1. What are the ways in which globalisation has made transnational paedophilia more rampant?
2. How do global forces contribute in toughening the stand against child sexual abuse?
3. Why are certain states not able to deal with increasing transnational paedophilia within their sovereign territorial borders?
4. How does the interplay of developed and developing economies create alternative conceptualisation of ‘childhood’ and ‘child sexual rights’?
5. How does power dynamics reconfigure under contemporary globalisation? Does it put state and market on the same pedestal?
6. How does transnational paedophilia redefine the inter-relationship between two contrasting economies of the world?
7. Why are global protection norms partially successful in dealing with the problem of child sexual abuse? How do asymmetries in the economic realm define clashes at the level of norm internalisation?

The study is based on four hypotheses:

Hypothesis 1: While the child as a bearer of rights against sexual abuse is a universally adopted norm, in practice the standards of child protection are varied and differentiated.

Hypothesis 2: Transnational paedophile networks redefine power asymmetries by imposing their needs and desires on unprotected children in poorer countries.

Hypothesis 3: Paedophiles in Germany shift their focus to countries like Thailand where the domestic law enforcement mechanisms are fragile and fraught.

Hypothesis 4: The German state's laxity in allowing its nationals to move outside the borders of Germany to have sex with children is selective and uni-directional.

## **Research Methodology**

This study is an empirical attempt to look at the emergence of transnational paedophilia within the theoretical frameworks of IPE. As case study is integral to research, it takes the case of Germany-Thailand network to test the validity of its claim. The study attempts to look at the politics of transnational paedophilia as the dependent variable. On the other hand, the role of economy, technological communication, tourism and market shall be the independent variable.

The study is exploratory in nature. It utilises both qualitative and quantitative methods in studying and drawing understanding about the topic. The study uses both primary and secondary data. Formal academic papers, newspaper articles, forensic documents, court transcripts, medical examinations (available at public health centres of both countries), advertisements and photographs, reports of international organisations, data from tourism ministries of both countries and governmental records shall be analysed to relate and draw conclusions regarding the cases. Personal interviews, archives, media constructions of paedophiles and blogs has been used to analyse constitution and objectives of paedophilia. Also, a number of policies and laws that have been designed in developed and developing countries to curb paedophilia have been analysed to bring out the gap between the official promises of state and its recuperating effect on society.

## **Organisation of the thesis**

The study is organised into six chapters including introductory chapter 1.

Chapter 2 titled ‘Transnational Paedophilia and the International Norm of Child Protection’ examines the various ways in which the international community has dealt with child sexual abuse. It seeks to understand the ways in which the parameters of child rights have changed within the changing dynamics of international legal, economic and political institutions of the society. It highlights the paedophile networks existing across the globe.

Chapter 3 on ‘Germany: Balancing Child and Paedophile Rights in Discourse, Law and Practice’ focus on the contribution of Germany in developing norms and fighting against child sexual abuse. It reveals that paedophiles in developed states become active agents in perpetuating structures that promote exploitation of a child. The chapter focusses on the ways in which the German state balances both child and paedophile rights within its borders.

Chapter 4 titled ‘Thailand: Inadequacies, Sexual Exploitation of Children and Emerging Asymmetries’ looks at the anomalies that emerge in norm diffusion due to political-economic considerations of a developing state. It delves into the inadequacies of Thai culture, demography, politics and economics and highlights the emerging asymmetries of power among neighbouring states and Thailand. Finally, the chapter also maps the main forms of child sexual exploitation prevalent and practised in Thailand.

Chapter 5 deals with ‘The Enablers of Transnational Paedophilia: Understanding the Germany-Thailand Network of Child Sexual Exploitation’. It undertakes a relational analysis of the various forms of exploitation, oppression and marginalisation implicit in transnational paedophilia. The chapter looks at the tendency of societies and the role played by Germany in relation to the thriving sexual exploitation of children in Thailand. This chapter narrates and locates the patterns of interaction that often converge at several nodes.

Chapter 6 is the ‘Conclusion’ and points out the emerging forms of exploitation in the global era. Finally, it concludes with the argument that many distinctive features of the process of interaction between developed and developing societies have taken place. Transnational paedophilia is one such compelling phenomenon that has revamped the logic of governance and interaction between developing and developed societies.

## **CHAPTER 2 - TRANSNATIONAL PAEDOPHILIA AND THE INTERNATIONAL NORM OF CHILD PROTECTION**

### **Introduction**

Since time immemorial, the idea of child protection from threats was restricted to the private domain of society, i.e. the family. The primary caretaker of children was the parent who provided them with life and basic necessities for sustenance. The state played the role of a provider of infrastructural facilities, access to education and other opportunities that would cater to the growth and development of children. Nevertheless, in conformity with contemporary changes in international politics, there seems to be an unavoidable requirement of reconsidering the necessities and needs of children. In the wake of the emerging liberal discourses, women have managed to create a space of deliberation wherein their needs and rights, and the needs and rights of children, have been re-articulated. The ever-increasing influence of the private players and emergence of welfare state has made the private realm non-sacrosanct. Furthermore, the globalising economic and political social setup has pushed concerns related to children to the international arena, thereby compelling international actors to deliberate upon the issues that affect one of the most vulnerable sections of the community, i.e. children.

Unlike earlier centuries, recent years has seen the growth of several approaches critical of traditional state-centred examinations of international relation, events and processes. Theories such as critical studies, structuralist interpretations, post-modernist approach to political events and emerging transnational discussions recognise the concerns and actions of children previously overlooked in International Relations (IR) discourse. This chapter seeks to argue that children are a significant social group and are subject to malpractices like abuse, trafficking, rape etc. Despite several efforts to mitigate the problems faced by children, there is a gap in terms of recognising the child as a crucial and important subject of world politics and dealing with the problems they face as a part of a society. Since the adoption of UNCRC in 1989, there has been a surge in concern about children as members of society, and the conditions that a child is subjected to as a victim to global social, political and economic forces. Notwithstanding the efforts undertaken by international organisations, state and non-state actors, children face a grim reality when they are subjected to sexual exploitation.

In the game of international politics actors play a significant role as agents of change. Unlike all other domains of society considering the idea of child agency raises several doubts and is far more complicated than it seems to be. Parent, guardians, state and other organisations are responsible for the choices made by the child at different stages of their life. Unlike these children, other categories like the street, kidnapped or run-away children and children working in brothels are those belonging to special situations and carry an aspect of self-agency yet, in general the idea of actorness of a child is highly problematic. This is not to deny that children have actorness, but it is not relevant to the present study and has not been taken into consideration as it is problematising from the IPE perspective.

The sexual exploitation of a child by a paedophile<sup>1</sup> takes place at four different spatial dimensions:

- a) The child exploited by a paedophile within the domestic borders of a state;
- b) The child sexually exploited by a paedophile who travels to the child's country, thereby engaging in transnational criminal activity;
- c) The child as an object of trafficking across international borders with the sole purpose of being sexually exploited; and
- d) The child as an object of desire in the virtual community exploited by paedophiles who use communication and technology as a means of satisfying sexual needs by means of pornographic industry.

It is important to note that it is not necessary that all paedophiles will engage in sexual activities. The group of paedophiles who participate in mobilisation for lowering age of consent but do not engage in sexual gratification are known as celibate paedophiles. They garner support for having sexual access, contribute to the process of agenda building and facilitate the entire process of networking.

This chapter contends with four main ideas. First, the definition of a child and the rights they enjoy has expanded and changed in dimensions. Secondly, globalisation has contributed in facilitating transnational paedophilia. This has outgrown the earlier

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<sup>1</sup>The sexual exploitation of a child is not done only by a paedophile. There are several agents such as friends, parents, brothel owners, pornographers of children and child traffickers etc. who objectify a child for commercial as well as personal sexual gratification. However, as the focus of this study is on sexual exploitation by paedophiles at all the above-mentioned levels, the term paedophilia has been used in all such contexts.

forms of exchanges and led to ‘flow and networks’. Flows relate to constant movement of ‘people, capital, goods, and knowledge; they took place through migrations, trade, conquest, and communications; and they included the spread and reworking of religion, science, popular culture, art, public policies, and social movements’ (Appadurai 1996:78), not specifically in a stipulated direction. Based on these unrestricted and non-stipulated flows, networks are formed which are not restricted to a single domain, country or entity but are global in nature. Thirdly, as a negation of the second argument, there is a strong framework of international and domestic law in articulating the norm of child rights protection against sexual exploitation. Such global norms are partially successful in dealing with the problems of paedophilia. Finally, from the perspective of IPE, perpetrators hailing from wealthier economies find easy accessibility to victims in weaker economies – both in financial terms and in terms of lax child right legislation and implementation as compared to their own countries.

There are four main sections of this chapter. The first section defines a child and elucidates the parameters of child right and child protection including the age of consent. The second section defines paedophiles as adult members of society who want sexual access to children. It elaborates the characteristics, demands and actions of paedophiles and the consequences on children. It also touches upon the intensification of transnational paedophilia as a consequence of globalisation and the ‘flows and network’ of power, money, and increasing receding of the welfare function of the state due to the primacy of market under the neo-liberal economic order. The third section highlights the efforts played by the stakeholders in mitigating transnational paedophilia. The final section concludes by summarising the arguments of this chapter.

### **Constituting the Discourse on Child Rights**

The most crucial stakeholder in the process of transnational paedophilia is the child. Defining who is a child is a source of constant debate both at the domestic as well as at the international level. This section aims to address the perceived gap in the international relations literature by outlining the ways in which the discourse surrounding the child has developed so far. This leads to an examination of how the child may potentially be conceptualised within the mainstream discourse. The idea of the child is envisaged in relation to two basic premises, namely age and rights. The



identity of a child is construed by looking at an individual's age and the claims that an individual is entitled to as a member of any society.

### *Who is a Child?*

The discourse revolving around the idea of child and childhood emanates from different ideas, beliefs, actors and institutions. There is a systematic predisposition that is 'built into the very way children are imagined' and this becomes the root cause of the inability to protect and guarantee child rights (Atmore 1999). It is only when the ideological dimension of the child and childhood discourse interweaves with the sociological, political and cultural constructions that a pragmatic understanding about the subject is revealed. Several contradictory impulses and impressions about the idea of the 'child' is the root cause of the inability to mitigate the harm done to children as members of the society (Barker and Weller 2003; Adams 1997). From the standpoint of discourse analysis, this section attempts to explore the diverse perspectives in perceiving a child and attempts to interweave them to create a better understanding about the problems faced by them.

The identity of a child has been reconceived within different contexts by human beings at several points of time in history (Bagley 1999). The construction of these discourses can be attributed to actors on the basis of their socio-economic and political positions within society. Adults have perceived children as 'dependent' members of society who need care and protection (Atmore 1999). The gamut of literature on children begins with andragogy, the traditional study of the role of children in society *vis-à-vis* the role of an adult towards them. The theory begins with a basic premise that children grow from being in a dependent interpersonal relationship with an adult to becoming a self-directed adult. Further, it states that children have a limited understanding of what it is to be a child and undergo several transformations whether physical, mental, emotional or biological in childhood. This section of the chapter discusses different approaches in defining the child and childhood.

Child conceptually and traditionally is understood as that member of the society who has to play specific roles in society. Adults presuppose a list of duties that a child is supposed to fulfill. In considering the obligations of a child towards society and family, there is a 'pre-analytic international understanding about aims and goals of schooling and playing' (Adey 2006: 157). The flipside of this discourse relates to a claim-based

consideration of child and childhood. Adults accept and work on eliminating all forms of exploitative structures like child labour, child marriage, child sexual exploitation etc. that pose a threat to children. It is imperative in this regard to 'rethink and reform their attitudes toward children' (Currie 1994:56). Do children think on these lines while making understandings about themselves?

The clash of discourse takes place when we look at the motivations that guide a child when it tries to situate itself in society. A child does not perceive itself as a 'bearer of rights' but as a 'creator of future' (Barker and Weller 2003). It forces society to reformulate the discourse about child and childhood. Located amidst dynamic and flexible changing world order, a child becomes the core of 'imagination, dreams and creativity' (Corteen and Scraton 1997: 75). As Constantine (1983) elaborates, children perceive themselves as a beholder of aspiration undergoing constant transition and transformation before and after onset of puberty. A child is not only a manifestation of the world view about it but an independent voice which expresses its feelings and requirements as a member of society. Thus, a child is someone who aspires to talk and express subjective understandings about life and needs (Greene and Hogan 2012).

#### *Paedophilic Approach to Child and Childhood*

Paedophiles postulate the idea of a child being constructed by state, non-state and other actors in society in a manner that any unethical and immoral actions against them becomes a sin (Sandfort 1982). This section gives a brief introduction to the perception of paedophiles on child and childhood discourses while the later part of the chapter discusses the emergence and roles of paedophilia at length. It must be clearly stated at this point that this thesis does not support paedophiles and their demands but merely attempts to bring together the varied discourses in looking at the child and its problems.

Paedophiles assert that adults regard themselves as experts when it comes to understanding the nuances that children face and perceive children as human beings who are in the process of 'becoming' (Atmore 1999). In the course of growing up and becoming adults, paedophiles state that it is adults who claim that they have all the 'knowledge about what it is to be a child' and what directions they need to become an adult (Hogan 2012). Several paedophile groups assert that such notions help adults in controlling freedom of choice that even children should have access to as members of society. On these grounds, a sense of responsibility builds among adults who consider

it as a moral and social imperative to look after a child. Moreover, paedophile activists argue that once a child is born to a parent, the latter take upon themselves the duty to take care of the child's needs and demands and in return expect children to adhere to their stipulated moralistic parameters especially when it comes to making choices on matters related to 'sex'. These moral regulators are not only parents/guardians but several nodes in society like the school, the state etc. which consider that sexual choices are not appropriate for children till they attain a stipulated age in life.

According to paedophiles, a child has not been allowed to self-write his/her needs, ambitions and desires as a free individual in society. By following different approaches and employing a very narrow understanding of a child and its childhood, the state and members of society create knowledge and theories by using power and politics as essential tools. (Wilson and Cox 1983). In postulating acts of ethics towards the child, state and society problematise the very identity of the child. The internal constitutive desire of every human being is to enjoy sexual sexual gratification. By imposing norms against sexual liaisons with children, the state impinges on the freedom of sexual expression of both the child and the adult. Thus, the child's identity remains silent and becomes subjected to opinions and ideas of others. In this regard, the paedophiles identify children as mature human beings with the ability to take decisions about 'truths' that govern their lives.

#### *Sociological Approach to Child and Childhood*

The child playing a pedagogical role in society is brought to light by the sociological understanding of child and childhood. According to current literature, the child is viewed as 'a unique and valued experiencer of his or her own world' (Edith 2007). Children from this point of view are identified as 'beings' rather than 'becomings' (Hogan 2012). Children are identified as self-constructors who believe in their own agency of construction. They not only view themselves as constructors but also view themselves as playing didactic roles. Sociological construction of childhood does not focus on 'biological incompleteness of children' or 'expression of personal agency' (Hogan 2012). Children contribute to the nation, they have a power of reasoning to look at history and to creatively establish facts. Thus, the human being with a greater commitment to society and to think towards shaping its future is the child.

Further, by using this approach in looking at the discourse surrounding a child, it is highlighted that a child grasps the abstract forms of events happening around it. Children can form ideas about these processes and believe in themselves as agents who can bring about change. Thus, self-belief is the innate characteristic of childhood which acts as a catalyst and motivates a child to form opinions and contribute to society. Thus, this approach focusses on a strength- based discourse on a child where a child is not just viewed as a ‘requirer’ of protection, care and policies but as a ‘provider’ of ideas, beliefs and other significant contributions as well. The social norms, ideas, beliefs and actions of a society can be redirected using the contribution made by a child.

Sociological understanding of childhood challenges all discourses on generational hierarchy and attributes of power. Scholars are extremely critical of the traditional and conventional roles related to childhood and seek to rework social structures to incorporate wider understanding. This school of thought attempts to make children both as a subject of inquiry as well as instruments of change. Under the broader theme of globalisation, the risks and rights of a child gets reconfigured. The cultural identity and the role of state in the reconstruction of a child’s cultural wants get influenced by the demands of free market economies (Folmar and Rabe 2009:79). In such a demanding situation, the sociology of body, leisure and daily requirements gets challenged and questions of agency and generation become important (Qvortup et al. 2009: 108). As children take an important position in economic institutions and structures they start catering to the marketplace by becoming objects of sexual gratification and supply. Not only in the marketplace, children have also become important agents at school, home as well as other social settings (Galm and Derr 2011:2013)

#### *Institutional Approach to Child and Childhood*

The inter-relationship between politics and childhood has varied yet inseparable dimensions and ways. In every country, the government tries to delve into the political rights, status, impact of politics and the extent to which children can be involved in political activities. Political sociologists in early 1960s brought the focus of political institutions on children and their concerns as members of society. The generic discourses, covering women and children together were revamped by arguments that addressed questions specifically about children and their relation to the world. Every child in the world is affected by the consequences of decisions taken at the political

level, whether he can relate to it or understand its dimension. This section attempts to look at the ways in which institutions and organisations approach childhood and define children and their rights.

The politics revolving around the identity of a child deals with age and biology. The increase in number of years from birth defines the growth of an individual from a child to an adolescent and then into an adult. Biologically, a child is someone between the age of infancy and adolescence. In this context, several scholars have put forward the related idea of puberty (Atmore 1999). In conventional use, a child is perceived as someone who is incapable of managing, holding and enjoying legal rights or having the capacity to perform actions that go beyond his/her capabilities and be responsible for the same (Brownlie 2001: 88). Considering the ambiguity in defining who is a child, countries have the discretion in determining the legal age limit of childhood. Even though the legal definition of a child varies across countries, several attempts have been made by international organisations to define a child.

The different approaches to looking at a child were discussed and based on these approaches international and regional discourses have defined the identifying criteria of a child (Delamont 2003). The politics surrounding the age 18 has been brought to light under the application of efforts made by international organisations to domestic laws. However, the standard defining age for most of the organisations is 18 years, apart from the ILO which has different criterion for determining the age of childhood in relation to stipulated age of labour.<sup>2</sup> Most countries accept 18 as the age of adulthood with some differences on the basis of parameters like child labour, child marriage etc. and make and enforce rules based on them. This indicates the changing discourse surrounding the idea of the child in the world politics. Nations are no more the default unit of analysis and with more and more permeability of borders there is an increase in the sources of threats to children. The agency-structure relationship has widened, and several nodes of power have been transformed, prompting the world to relook at the definition of the child. Moreover, economic factors impact upon the idea of child and

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<sup>2</sup>The age of majority criterion is accepted by all countries and organisations as a demarcating continuum between the child and an adult. ILO in terms of child labour sets forth a standard that puts it at a far lower age. The 1973 minimum age convention defines child labour 'as any work performed by a child below 12 years of age, work done by children aged 12-14 years which is non-light in nature and any kind of life-threatening work done by children between the age of 15 to 17 years.

childhood whereby a child in a high-income country is perceived to be different from that of a middle/lower income economy.

There is an extensive debate with regard to the origin of age as a defining criterion of childhood. The earliest mention of 18 years as the measuring continuum between a child and adulthood is seen in 1989. As per the manual released by the United Nations International Children's Fund (UNICEF), a child is defined as 'every human being below the age of 18 years unless, under the law applicable to the child, majority is attained earlier' (UNICEF 2009: 13). In common parlance, a child is an individual who is not yet an adult or has not yet reached the age of maturity. As per Article 1 of the UNCRC a child is considered as a 'human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier' (UNCRC 1989). Most countries across the globe have defined a child in terms of a legally specified age of maturity.

Since then 'attaining 18 years' became the defining criteria of an adult in most of the international treaties, conventions and agencies of the UN. There is very minimal difference between UN's defining criteria and those mentioned in two other international documents. It is remarkable to note that all post-1989 resolutions mention 18 years as the age of completing childhood and attaining adulthood.

According to the African Charter on the Rights and Welfare of the Child (ACRW), released in 1990, the definition of a child incorporates 'every human being below the age of 18 years' (Article 2). The European Convention on the Exercise of Children's Rights (ECECR) 1996 is eligible to be applied on every child who has not reached the age of eighteen (Article 1(1)). The European Union has time and again devised mechanisms to deal with the increasing abuse against children within its jurisdiction and abroad. The ECECR was adopted to provide an opportunity to children to exercise their rights only after inculcating a thorough knowledge and understanding about the issues they face. With regard to this, it was the family's duty to imbibe information relevant to a child on the basis of its increasing age and needs. It also states that 'due weight' should be given to children's ideas and views. This right to information, participation and expression helps to build a system of communication between the parent and child and helps the child to build a strong foundation for its views on different subjects (Articles 3-5).

The Universal Declaration of Human Rights (UNDHR) deals with two specific clauses on children. Firstly, it upholds UNCRC's age criterion, specifying 18 years as the age of attaining adulthood, and secondly 'considers application of human rights to all children' (Article 6). There is no clear rationale to highlight the reasons why 18 years was chosen as the criterion to determine the age of attaining adulthood. Prior to the beginning of twentieth century, with the completion of basic school education it was considered that a child has become matured enough to take decisions. In the mid-twentieth century the discourse of age of adulthood became entwined with the idea of universal adult suffrage and most of the emerging nations (from colonised rule) began accepting 18 as the age of adulthood. However, these trends are not uniform in nature and have been changed on different occasions and points of time to accommodate social necessities.

It was widely accepted that age brings maturity and instils a sense of responsibility in an individual to take charge of oneself *vis-à-vis* other people. The International Covenant on Economic, Social and Cultural Rights (ICESCR) 1966 regards a child as a 'dependent member' of the family. It is the liability of the family to provide 'care and education of dependent children' (ICESCR 1966). The International Covenant on Civil and Political Rights (ICCPR), signed in 1966, considers the child as someone by right of acquiring status of nationality 'have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by their parents' (Article 18, item 2). The Worst Forms of Child Labour Convention (WFCLC) states its foremost aim as being to 'adopt new instruments for the prohibition and elimination of the worst forms of child labour', and 'to complement the Convention and the Recommendation Concerning Minimum Age for Admission to Employment, 1973, which remain fundamental instruments on child labour'. Also, for the application of all its aims the WFCLC considers 'child' as all 'persons under the age of eighteen' (Article 2).

To bridge the gaps at regional level, the South Asian Association for Regional Cooperation (SAARC) Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia was made in 2002. It defines a child as 'any person who has not completed 18 years of age, is a resident of that region, unless under national law majority is attained earlier' (SAARC 2002). Extending these provisions further, the

SAARC Convention on Preventing and Combating the Trafficking in Women and Children for Prostitution was adopted in the same year.

Defining the child at the international level is an important initiative of international and regional organisations to come to terms with and disseminate a clearer understanding of the child. Do states accept 18 as the age of adulthood? Are there hidden nuances to the universal adoption of this age criterion? Why are there discrepancies between two countries in doing so? Does economy have to do anything in this? Let us now look at the internalisation of these criteria at the state level. For example, in the United Kingdom (UK), originally a child was described as a person under 16 years of age by Section 7 (6) of the Protection of Children Act (PCA) 1978. However, this threshold was redefined in 2003 by the Sexual Offence Act 2003. By this act any person under the age of 18 was considered a child as against 16 years (Currie 1994:26).

The age criterion as the line of demarcation between an adult and child is slightly varied, but nevertheless a necessary requirement. As we have already discussed earlier there are different reasons why a country considers a human being as an adult. No specific parameter has led to the agreement that 18 years is the ideal age of adulthood and countries combine two or more reasons for determining the same. Commonly, countries across the globe use different parameters in establishing at which age a human being would be considered as a child, adolescent or an adult. These include age of sexual consent, age of marriage, age of majority, age of driving, age of voting, age of drinking and smoking and finally age of criminal responsibility. The age defining each of these parameters differ from one state to another as several domestic variables are considered before accepting norms that would apply to each of these criteria.

For the purpose of this study we will analyse the age of sexual consent, age of marriage and age of majority. Can we find any commonalities between high-income economies and middle-income economies on these parameters? Or are there differences that appear in such settings in defining a child and how it differs based on the above-mentioned parameters? Does this lead to an alternate idea of child and childhood? Does this make the task of a transnational paedophile easier?



<b>Table 2.1: Comparative table showing age for consent, majority and marriage in different countries.<sup>3</sup></b>				
<b>COUNTRY</b>		<b>AGE OF SEXUAL CONSENT</b>	<b>AGE OF MAJORITY</b>	<b>AGE OF MARRIAGE</b>
<b>High Income Countries (2017)</b>	<b>Norway</b>	16	18	18 or 16 (Parent Consent)
	<b>Australia</b>	16	18	18
	<b>USA</b>	12	18	18 (no age ascertained)
	<b>Germany</b>	14	18	18 or 16 (Parent Consent)
	<b>Denmark</b>	15	18	18
<b>Middle/Lower Income Countries (2017)</b>	<b>Thailand</b>	15	18	20 or 17 (Parent Consent)
	<b>Indonesia</b>	19	15	18 – Boys; 16 Girls
	<b>India</b>	16	18	21 – Boys; 18 Girls
	<b>Philippines</b>	12	18	20 or 18 (Parent Consent)
	<b>Kenya</b>	14	18	18

Source: [www.worldbank.org](http://www.worldbank.org) and [www.imf.org](http://www.imf.org)

Analysing the table above, one can make some very crucial observations about the politics of age of consent. Firstly, in initiatives taken by international organisation no discussion about ‘age of consent’ has been made even though they protect a child below 18 years of age from all forms of sexual exploitation and abuses (Daniel and Evatts 1998). This leaves room for different countries to set their own age of consent. As can be seen from the above table, age of consent ranges from 12-19 in middle/lower income economies and 12-16 in high-income economies. The data shows that paedophiles can easily engage in sex with children both in high-income and middle-income economies by making it ‘consensual’. Whether it is Norway, Australia, USA, Germany and Denmark, or Thailand, Indonesia etc., engaging in consensual sex with a child is easy. Yet, it is very difficult for paedophiles to engage in sex with children in high-income economies. Even if theoretically the age of consent is higher, weaker norm implementation mechanisms make children vulnerable in countries that are economically weaker. Several other factors lead to vulnerability which will be discussed in the subsequent chapters.

<sup>3</sup> Countries have been chosen as per the World Bank and IMF list of top five high-income. For middle/lower income economies countries list of ‘highest sexually exploited children’ has been chosen as available on ECPAT. Data has been collated from various primary sources listed as a part of bibliography.

### *Rights-Based Approach to Child and Children*

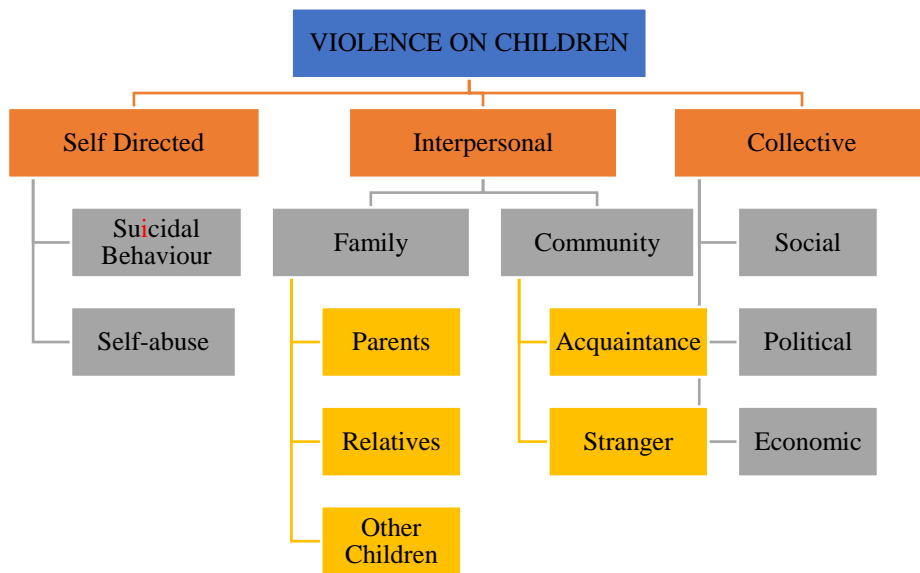
A crucial parameter in revealing the embedded understanding of child and childhood is the rights-based approach. There are two crucial aspects in understanding the discourse around child and childhood by using this approach. First, the idea about the child at the international level. Second, the way in which non-governmental actors perceive the notion of a child and childhood. The section discusses in detail about the contribution of formal institutions and structures in contextually situating the idea of child and childhood in the realm of international politics.

Powerlessness is the root cause of the vulnerability of a child (Chidley 1996:79). Here, power comes to be defined as brute physical force and the inability of a child to fight against a more combative and powerful oppressor. By giving the child some basic entitlements, the state gives the child an ability to protect. The defining criteria of a child does not only relate to the age, maturity or biology, but also correlates to the claims that a child is entitled to as a member of society.

Universally, a child is a member of international community with basic rights such as right to survival, right to protection, right to development and right to participation (UNCRC 1989). From the conception of a child in its mother's womb until a child attains adulthood, all basic entitlements are endowed upon it. In providing these fundamental rights to a child, parameters such as sex, colour, race, gender, language, religion, ethnicity, societal status or the individuals background are not considered in principle although operationally they certainly do matter. The right to protection is more than just a right: It is a framework or a system by which all other rights can be ensured. Child protection is the first step in ensuring the claims of the child upon society.

Protection is a necessity in the international community due to rising threats to the child in society (Mustanki et al. 2003). Steven Pinker writes about the overall reduction in violence among human beings (Pinker 2011). However, the data on sexual exploitation of children highlights that 'violence against children' has increased (Paskell 2012: 85). The UN reports released between 2010 and 2016 shows that approximately 120 children around the world are sexually forced upon, raped, abducted and kidnaped for commercial sexual exploitation every day. The two contributing factors that bring about this change are the process of globalisation and the advancement in communication and

technology. Several other indicators of long- and short-term trends of violence are drug addiction, interpersonal abusive behaviour, increasing rates of child trafficking, sexually abusive encroachments by family members and strangers or wider meshes of exploitation through sex industries. The only novel contribution of this menace against children is the requisitioning of theories of knowledge, power, asymmetries, oppression and marginalisation. The continuing demands of the offenders and the entire process of sexual exploitation raises theoretical and epistemological questions regarding relationship patterns both within and between high income economies and middle/lower income economies.



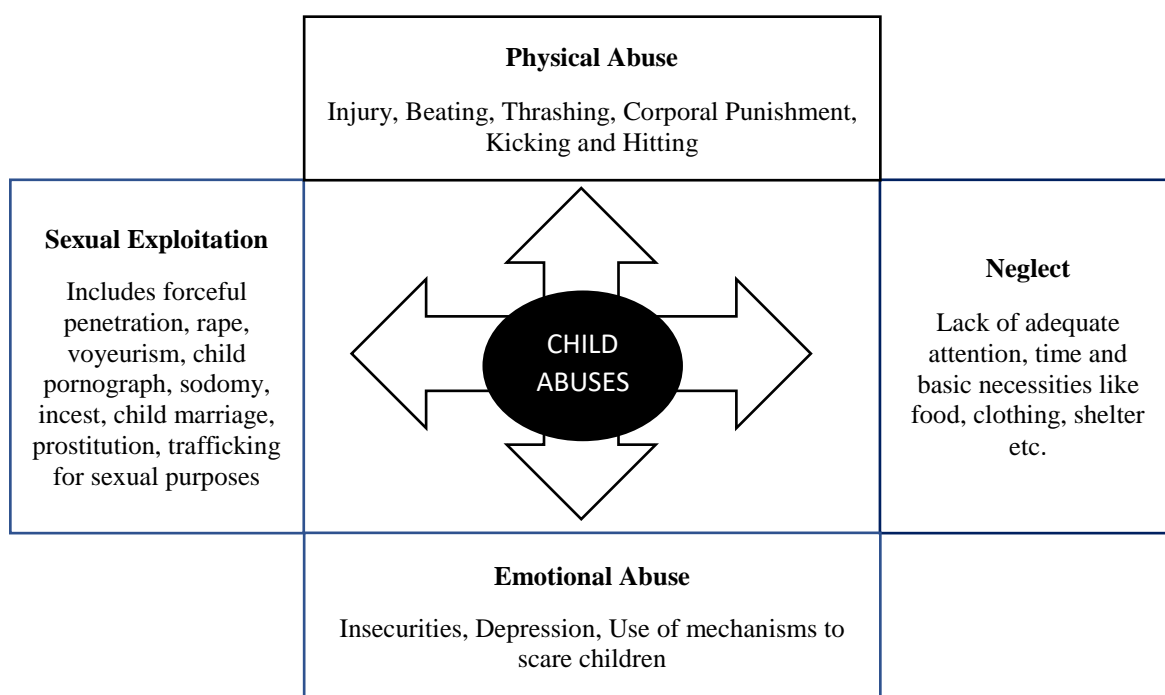
**Fig. 2.1: Different Kinds of Violence**

Source: Tabulated by using data from [www.childlineindia.org.in](http://www.childlineindia.org.in)

The above figure depicts the forms of violence perpetrated upon the child as a member of society. The nature of violence ranges from physical abuse to neglect. It has been estimated that globally 1.8 million children are sexually exploited, 1.2 million are involved in sex trafficking, 2.1 million children are suffering from HIV/AIDS (Save the Children 2004). The mechanisms for protecting the child range from meeting universal children’s human rights standards to ensuring basic entitlements. There are several organisations that deal with ‘elimination of poverty’ (ECPAT 2005) to providing ‘basic life-conditions like food, shelter and clothing to children’ (ISCA 2004:76). Some scholars have stressed the importance of creating access to information on child rights or related issues for children to ensure holistic absorption in society. This would ensure that a child is aware of his/her rights and cannot be exploited by

oppressive structures in any society. This relates to the development of an education system that is sensitive to rights of the child and builds awareness among children to help realise their potential in life.

Figure 2.2 highlights the different types of abuse that a child face. A child is not only subject to ramifications that are external but also as a member of his/her family. Across the world children have been used as objects of sexual gratification within the domestic walls of ‘house’ by ‘care-givers’ and other known people. It is generally observed that male members of the family who hold a position of supreme significance like grandfather and father generally engage in sexual abuse with children followed by female members and distant relatives (ILO 2006).



**Fig. 2.2: Forms of Child Abuse and its parameters**  
 Source: www.unicef.org, www.childlineindia.org.in

In order to ensure protection to children the society needs to engage in planning and implementing a pragmatic approach. The major parameters to protection involve shielding of the child from all forms of vehemence, mistreatment, mishandling and misappropriation. The biggest obstacle in successfully dealing with problems of children is that they are unrecorded and inadequately monitored in a systematic manner. Children face several problems which leads to ‘exploitation, abuse and neglect are at risk of shortened lives, poor physical and mental health, educational problems

(including dropping out of school), poor parenting skills later in life, homelessness, vagrancy and displacement' (Save the Children 2004). The International Labour Organisation (ILO) estimates that '218 million children were involved in child labour in 2004, of whom 126 million were engaged in hazardous work'. (ILO 2006: 286).

As opposed to an insecure and violent environment, a child grows up as good human and citizens with able qualities only when placed in a stable and protected society. Child protection is about protecting children from or against any perceived or real danger/risk to their life, their personhood and childhood. It is about reducing their vulnerability to any kind of harm. In this regard, it is of foremost importance to protect children born in brothels. For example, in Thailand, where prostitution is not legal, children are born in illegal 'red-light areas' and in such contradictory situations, the protection of children born within brothels and red-light areas are pushed into illicit activities as a matter of fate (Ameh 2001: 99). Norms must ensure that no child falls out of the social security and safety net and those who do, receive necessary care and protection to be brought back into the safety net.

A review of epidemiological surveys conducted by International Save the Children Alliance in 2004 from 21 countries, mainly high and middle-income countries, was revealing. In high income countries, it was found that at least 7% of females (ranging up to 36%) and 3% of males (ranging up to 29%) reported sexual victimisation during their childhood (Currie et al. 2004). As per the reports of the study, the percentage of sexual abuse of girls was between 14% to 56% and that of boys was up to 25 %. However, these numbers were alarmingly high in 10 out 21 middle/lower income countries where the percentage of abuse of children was 66% for girls and 45% for boys.

UNICEF uses the term 'child protection' to refer to protection from 'commercial sexual exploitation, trafficking, child labour and harmful traditional practices, such as female genital mutilation/cutting and child marriage' (UNICEF 2001). UNICEF's child protection programmes also target children who are uniquely vulnerable to these abuses, such as when living without parental care, in conflict with the law and in armed conflict (UNICEF 2004). The convention on the rights of the child (1989) outlines the fundamental rights of children, including the right to be protected from economic exploitation and harmful work, from all forms of sexual exploitation and abuse, and from physical or mental violence, as well as ensuring that children will not be separated

from their families against their will. These rights are further refined by three Optional Protocols, one on the sale of children, child prostitution and child pornography, another on the involvement of children in armed conflict and yet another dealing with the protection of children on internet and other internet communication forums (UNICEF 2005).

### *Interconnecting Concepts and Sources of Threat*

In order to understand the panorama of sexual exploitation of children, it is vital to understand its interlinking concepts. There is a comprehensive literature available on the sources of threat to a child as a member of the society. The focus of this study is to look at the threat emanating from sexual exploitation of children by transnational paedophiles in the international political economic context (Drakeford and Butler 2011). In this regard, terms such as ‘child sexual abuse’, ‘child sexual exploitation’, ‘commercial sexual exploitation’, ‘child sex tourism’, ‘child trafficking for sexual purposes’ and ‘paedophilia’ need a re-examination.

As per the existing literature, the term ‘paedophilia’, ‘child sexual abuse’, ‘sexual violence against children’ and ‘child sexual exploitation’ have been used to denote similar meanings and usages (Williams 1999). However, under the rubrics of governmental policies, law enforcement mechanisms and ongoing international deliberations, each of these terms have come to be recognised as separate conceptualisations which help in relooking at the problems faced by children (Haudrup-Christensen 2004). This section will look at the points of similarity and divergence among these terms.

Sexual abuse of child or child sexual abuse is an act of exploitation where the child becomes an object of sexual gratification by an adult (Williams 1999). This does not amount to establishing any relationship with the abused. At times, sexual abuse of child can also involve violent or aggressive acts like murder, strangulation, shooting, etc. (Marshall et al. 1997).

The discourse around the term child sexual abuse finds its origin in the writings of Sigmund Freud. The earliest attempts of constructing an idea on child abuse were rooted in the discipline of psychology. The sexual aspect of the discourse around abuse of children, was advanced in the 1970s in the US, driven primarily to establish the need for protecting children from all forms of physical abuses (Cohen 2000: 99). The link of

child sexual abuse with politics and legal practices began with the second wave in feminist movements that took place in the 1980s. The second wave of feminist scholars were concerned with the 'gendered roles in society' (McRobie 1991), patriarchal setups and exploitative relationships between children and adult (Melrose 2012). In recent writings on child sexual abuse, the term 'abuse' is seen as a theory of assertion where the adult uses his/her position of superiority to exercise dominance and power (Caztells 2009; Kitzinger 2006). It is an umbrella term that encapsulates several forms of sexual abuses like child rape, child voyeurism, pornography, child marriage, etc. Child sex abuse overlaps with paedophilia on the innate desire of both to have sex. However, the basic premise of contention is on the act of engaging sex (Li 1991, Marshall 1997). While child sex abuser will engage in a sexual relation even if it amounts to rape, a paedophile will actively seek to establish a sexual relation but may or may not engage in it always (McClintock 1996). Thus, not all child sex abusers are paedophiles.

Sexual exploitation of children cannot be understood as an isolated phenomenon. Its closest association is with 'child sex tourism', 'trafficking of child for sexual purposes' and 'paedophilia'. Just like an adult, when a child is 'alienated' from the necessities of childhood and considered as a commodity of physical enjoyment and sexual gratification, it enters into the realm of exploitation at the hands of its exploiter. Scholars have reflected on the idea of sexual exploitation of children at the hands of adults as the result of 'commercialisation' and the expanding influence of state and market on spaces of interaction between an exploiter and the child (Nussbaum 1998).

The term sexual exploitation of children was for the first time discussed by non-state actors and international organisation in the 1940s. The concern of child protection was raised under the rising threats post WWII when children were used as gratification objects by military personnel in war hit areas. Subsequently, under the increasing growth in tourism, children were considered to be a source of sexual gratification and joy. In deep connection with sexual exploitation were its two most important manifestations: child prostitution and child pornography. While on the one hand child sex tourism initiates a process of sexual exploitation of children, child prostitution and child pornography become two crucial ways of gratifying this thirst for sexual exchanges (Lowe and Pearce 2006: 123). Child sex tourism is defined as 'the sexual exploitation of children by a person who travels from his or her home region in order to have sexual contact with children' (Johnson 2011: 22). 'Child Sex tourism' has an

inherent idea of illegality (Tepelus 2008). All states across the globe acknowledge the use of the child as ‘an object of sexual sexual gratification’ within the framework of tourism, as a punishable offence.

Abuse and exploitation are conjecturally used terms. However, in looking at the problems faced by a child, abuse partially reflects a point of contact between the stakeholder and the abused whereas, the domain of exploitation involves ‘flows and networks’, several nodes of contact, ‘exchange of money’ and a set of well-defined stakeholders. From this perspective, sexual exploitation of children points at organised crimes with its own flows and networks. Here, the behaviour of the exploiters gets exhibited and the several actors, for example brothel owners, pimps etc., get involved and contribute in the entire process of exploitation, thus making it a network of sexual exploitation. Thus, sexual exploitation of children involves ‘using a child for sexual purpose in exchange for cash or in-kind favour between the client/customer and intermediary or agent who profit from such a trade’ (Pearce 2007). There are three conventional categories of sexual exploiters who use children as a means of gratifying their sexual demands, namely, preferential sexual exploiters, situational sexual exploiters and paedophiles (who have organised themselves at transnational levels) (Rubin 1992; Sandfort 1998; Seto 2002; Valentine 2004). Each of these are compelled to hide their identity as mainstream theories perceive them as a ‘potential harm’ to children (Warrington 2010; Williams 2010).

### **Paedophilia: From Past to Present**

The idea of paedophilia has been extrapolated and understood in numerous ways. It has been studied as a multi-disciplinary phenomenon with contributions from several schools of thought from different disciplines. In recent years, paedophilia is defined not only through the perspective of psychology but also as having political (Clark 1999), economic (Bhagwati 2004, Ohmae 1990, 1995, 2005), social and cultural (Tomlinson 1991, Appadurai 1996, Hannerz 1996) manifestations. However, despite having such wide coverage in all spheres of individual and social life, we are yet to achieve a proper definition of the term. There seems to be a lack of a universal and homogenous understanding of paedophilia. Paedophilia is both a concept as well as a phenomenon (Wilson 1999). As a concept, it is complex and as a phenomenon we find its ramifications across the globe.



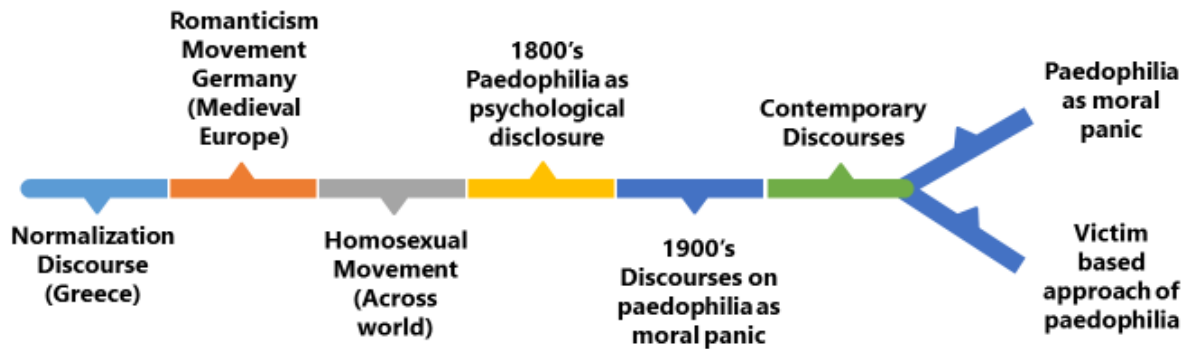
Difficulty in defining the term paedophilia is for two main reasons. Firstly, it is a fact that the concept of paedophilia emanates from different disciplines which leads to multiple connotations of the term. In the course of deriving what constitutes paedophilia, a scholar has to absorb understandings of biology, economics, psychology, politics, sociology etc. Thus, interweaving a single connotation of the term as a subject of international politics requires extreme precision and clarity.

Secondly, at several junctures paedophiles are often confused as child sexual abusers. This is a source of confusion and a concrete conceptualisation is not possible leading to several loopholes at the level of norm-building. There is a lack of consensus at international level on transnational paedophiles, who are often confused as child sexual abusers. In the course of examining the dominant literature in different disciplines, several subtle variations emerge and the distinction between child sexual abuse, child sexual exploitation and paedophilia seems weak. The two terms child sexual abuse and paedophilia are used conterminously (Dicken 2007).

The theoretical underpinnings evident in the existing literature helps us in establishing a nuanced understanding of the term 'paedophilia'. A paedophile is a doer who performs roles and functions as a member in society. Each and every activity can be re-examined under the theoretical debates and deliberations to bring out the nuances in the role that they perform. In order to gain clarity about paedophiles and paedophile networks we need to examine the history of paedophilia. By incorporating a historical approach, scholars seek to make sense of the way in which paedophiles are being perceived today. How is it different from the earlier ideas about adult-child sexual relationships? What are the changing contours in theory and practice on sexual exploitation of children?

### *History of Paedophilia*

This study looks at the history of paedophilia because paedophiles are people who subject 'children into exploitation'. By tracing the discourse on paedophilia from its earlier forms till today one can identify loopholes and propose a better strategy in dealing with this menace against children.



**Fig. 2.3: Discourse on Paedophilia and evolutionary depiction**

Source: Compiled using L. De Mause, *“The history of childhood”*, London: Souvenir

The initial phase of development of paedophilia is a crucial period in history. Distinct forms of sexual interaction, different stakeholders and changing forms of human relationships have led to an entire body of scholarly work on the emergence of paedophilia (Sandfort 1987). The origin of ‘a form of paedophilia’ is credited to Greek custom where it was recognised as ‘pederastic tradition’ where a ‘free-born boy could enter into a relationship with a free-born man’ (in this period, citizenship of Greece was a crucial requirement to be free). Surprisingly, this form of interaction continued to find its influence over Hellenistic and Roman traditions and retained the same zeal till the middle ages (Sandfort 1982).

The effectiveness of paedophiles was felt during the renaissance period where it managed to successfully champion open-ended paedophile relationships. Painters like Michelangelo, through his sculptures and paintings expressed the rediscovery of passion, love and joy of engaging in sexual liaisons with children in the 15<sup>th</sup> and 16<sup>th</sup> centuries. The practice of association between adult males and children were justified by many, most prominently German idealists, as a result of the Romantic movement in Europe. This alternate view of relationships was also expressed in ‘androphile’ homosexuality, driven by the belief that the only way to enjoy sex, at its best, was to engage in erotic relations with children below the age of puberty (Frawley-O’Dea 2007: 49).

Activists within the Romanticist movements identified the above-mentioned statements as theories of intellect and power based on cultural models of eroticism and sexual indecency. John Henry Mackay was the first person to look at paedophilia as a discourse within politics. His work was discarded at that point of time as he justified man-boy love as having political rather than cultural orientation. However, in due

course of time paedophiles began recognising Mackay's writing as the right strategy in trying to establish the homosexual movement (Prentky and Knight 1990: 3).

In the initial years, the homosexual movement believed in a much more nuanced assessment of paedophilia. Rather than demanding legitimacy for same sex relationships, the homosexual movement prepared a manifesto that aimed at 'elimination of all age-of consent norms and limitations' (NACHO 1969). However, these demands were sacrificed by homosexuals who feared the rejection of their wider agendas due to their association with paedophilic ideas. This led to the emergence of several independent paedophile groups who raised their voice at different points of time to represent their needs and demands.

Homosexual activism has found its space in politics across different parts of the world. As against heterosexuality, homosexuality stresses on the desire to have a sexual relationship with a partner of the same sex (Gay 1986: 89). The quest of gratifying sexual requirement with children by honing the homosexual movement is a new approach adopted by paedophile activists. They delve into the history of human civilisation and pull out innumerable examples that exemplifies their claims and demands. Several religious groups, cultural setups, institutions and societal mechanisms have historically operated to accommodate demands of sex between an adult and child (Adam 1986).

The component of establishing sexual liaisons with children has been central to the politics of emancipation spearheaded by paedophile groups. The earliest attempt of organising paedophiles into a structured setup took place in Netherlands in the 1950s (Shaw and Butler 1998). Following this legacy of sexual emancipation and as a critique of the politics of dissent, transnational paedophiles across the globe started organising themselves as advocacy rings and groups (Abel et al. 1987: 29). These movements were based on some broad features: a) they rejected age of consent norms; b) they demanded that sexual emancipation was a basic human need and not an immoral demand; and c) they focussed on achievement of their goals thorough global mobilisation.

Thus, the central moving forces in the history of paedophilia help us in drawing generalisations about its parameters today. By mapping the course of its evolution, we can derive how paedophilia is perceived today (Ahlers et al. 2011: 89). First and

foremost, paedophilia is not an abstract, contemporary phenomenon for it has a long history which demonstrates that paedophiles have existed through history in different names and forms. Secondly, it can be easily understood that the character of paedophilia has undergone a sea-change. Something that began as love, lust and feelings has found its way as a disease, maltreatment and cause of concern. Having said this, let us look at the common and popular approaches incorporated by stakeholders in understanding paedophilia and its recurring problems (Constantine 1983: 2). Thus, let us look at the different notions on paedophiles and paedophilia.

The idea of interconnecting all the existing theories on paedophiles is a daunting task due to subtle variations in its related terms and concepts. There are several terms associated with paedophilia like hebophilia, ephebophilia, androphilia and pederasty (Proulx et al. 1997: 76). There are very subtle variations in each of these terms (Coleman and Miner 2000). Paedophiles have been classified on three parameters:

- a) On the basis of preference: homosexual paedophiles, heterosexual paedophiles or non-discriminating paedophiles.
- b) On the nature of sexual fantasy: consensual, aggressive or forced.
- c) On the basis of mode of contact: the type of contact they have with children (Jones 1982), whether direct, virtual or celibate.

In common parlance, paedophiles are adults who are consistently lobbying for abolition of age of consent laws and allow sexual rights to children (Nambla n.d). Just as all child sexual abusers (for example, someone who supports child marriage) are not paedophiles, not all paedophiles are child sexual abusers. This qualification notwithstanding, the two terms are often used synonymously. The main distinction between paedophiles and sex offenders is that paedophiles do not necessarily act upon their sexual attractions, whereas sex offenders do act upon their desires. Therefore, not all paedophiles are sex offenders, just as not all sex offenders are paedophiles (Chidley 1996:71).

The etiological view to paedophilia is brought to light by the writings of Gisela Bleibtreu- Ehrnberg (1988). This study hints at an anthropological explanation to paedophilia and paedophile demands. It states and at the same time challenges that there is an innate desire among human beings to protect children. Adults make their presence felt in society by protecting the physically and mentally weaker sections in

this case, children. The climax of this kind of mutual reciprocation of relationship comes when adults correlate this mechanism of protection with education (Ehrnberg 1988: 257). Paedophiles across the world, take into cognisance the idea that the foremost concern of every agency-structure relationship is to educate. However, in doing so, society tends to overlook the idea of sex education. Sex education cannot be taught through lectures; it needs to be practised and mastered. By taking examples of sex socialisation duties performed in the native practices of Melanesian societies, the pre-modern Japan Samurai warriors and the Azande tribes (Tindall 1978: 56), they state that sexual access to children has a hidden motive of education and training not only sexual gratification (Nambala n.d.)

In psychological analysis, paedophilia has been conceived as a severe health condition that has and continues to grow exponentially having a negative implication on society and its members (Ellis 1933:87). Paedophilia, defined by the International Classification of Diseases (ICD) as the 'sexual preference for children, boys or girls or both, usually of prepubertal or early pubertal age' (ICD 2012: 72; WHO 2006) this idea has gained importance internationally as a medical condition, however, successful dealing of this problem has been severely impeded by several prevalent factors for e.g. high rate of unreported and unaccounted occurrence (Ryan 1996). In view with this notion, paedophilia has often been discussed in society as a moral wrong.

As a sexual orientation, paedophilia is perceived as an innate inclination among men and women to engage in sexual liaisons with children. This approach seeks to move away from viewing paedophiles from a 'victim-centric approach' to a broader understanding of who becomes a paedophile. In this regard, paedophilia is segregated as 'sexual orientation with regard to age' and 'sexual orientation with regard to gender' (Seto 2010: 58). In some cases, paedophiles borrow and advance arguments put forward by homosexuals to legalise their interests. Just like in homosexual movements, the sexual desire of people of same sex is legalised as sexual orientation, a change in the way paedophiles are perceived is also desired. This 'sensitised approach towards paedophiles' views the innate fantasy of a paedophile as a biological necessity, thus forging a more compassionate and less discriminatory treatment of paedophiles (Seto 2008: 4). In line with this approach, several countries view paedophilia as a crime but the paedophile as having a clinical problem. By adopting this view, a paedophile is

treated as having a mental disorder, which can be cured by rehabilitation projects and programmes.

In the media, monotypes of crime and criminal tendency are associated with paedophile or other paedophilic interests (Kitzinger 2004). Media is a powerful source of communication due to its reach and visibility. It shapes the attitudes and perceptions of policy makers, individuals as well as international organisations. Some forms of media function as the expressing outlets of paedophiles as well. Commonly, paedophiles are depicted as 'serial and recidivist sex offenders' (Fisher 1994: 200). Without a doubt, the role of the media is to increase awareness in society (Kitzinger 1988: 55). However, the profit motive pushes the media choose to make some issues more important than others. By using headlines like 'Paedo caught by perv site', 'My brave girl caged a monster', 'Mobs and monsters', paedophiles are denoted as 'monster' which leads to a moral panic at all levels in the society (McNair 2002:107).

Personality overlaps lead to the problem of identifying a paedophile. This is the main source of ineffectiveness on laws against paedophiles. A paedophile could be anyone. The same human who is a professional like a teacher, lawyer, banker etc. could have a paedophilic orientation. Thus, who are paedophiles remain a mystery. 'There is doubtless no subject on which we can obtain more definite opinions and less definite knowledge' (Henn et al. 1976: 694). Also, there are very high chances of confusing a paedophile with a 'child sex offender' (Okami and Goldberg 1992: 322). This confusion makes it a difficult task to identify a paedophile within the gamut of child sex offender, abusers and violators. The technicalities often make the task easy but at the same time they also make things difficult. In this sense, scholars often point out the conditions of inability among policy makers and activists to deal with this menace effectively.

Emerging from all the above-mentioned conceptualisations in identifying paedophilia is the concept postulated by paedophiles themselves. The paedophiles had to manoeuvre a strong place for themselves through which they could put forward the views about themselves. They seek to assert a radical case in expressing their desires and requirements as members of society. In doing so, paedophiles find themselves fractured between instances of erotic sexual narratives across human history and the recently emerging panic theories in the international political realm. They delve into different discourses on child sexuality to show that children have innate sexual desires and fantasies. They borrow from the liberal theories of freedom and emancipation and

put forward a radical case for their needs and desires. They pressurise the government to perceive them as ‘legitimate demanders’ (PIE 1975). By hitting on the theory of human needs they put forward their goals of engaging in sex with children as a necessity both for the child and the adult.

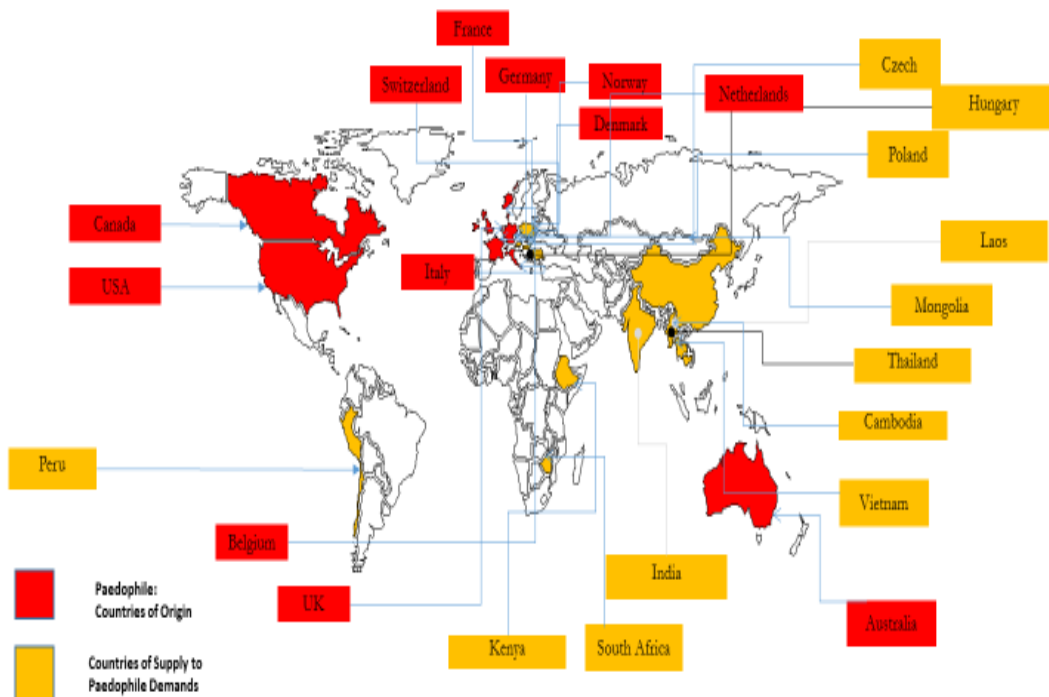
### *Transnational Paedophilia*

The interaction between the state and market under conditions of neo-liberal globalisation has led to the emergence of transnational paedophilia, leading to consequences which have enveloped different quarters of the world (Agnew and Collbridge 1995: 79). The current work looks at the asymmetrical relations between economies based on concentration of wealth, power and market flows. In this context, the term transnational paedophilia is more apt in bringing out the various shades of exploitation and marginalisation. The term ‘transnational’ is deeply entwined with the idea of ‘network and flow.’ This chapter seeks to unravel the theoretical underpinnings of the phenomenon of paedophilia from the perspective of IPE. As a discipline, IPE deals mainly with two actors: states and markets. It encapsulates their functioning in the international scenario (Blyth 2009: 95). The rationale for such an approach lies in the fact that the literature on globalisation has not successfully answered questions regarding the role of states and its interplay with other actors such as the market on issue and concerns of children.

The main issue in accepting paedophilia as a problem that needs immediate attention emerges from the subtle variations that exists in the role played by states and markets in a ‘international’, ‘global’ and ‘transnational’ world (Paoli 2002: 71). The hyperglobalists (Held and McGrew 1999, Ohmae 1995) presume the creation of the ‘borderless world’ (Ohmae 1990) due to the integration of all the national economies of the world. In this view, the market subordinates the activities of states. The sceptics (Held and McGrew 1999, Hirst 1996, Thompson 1996, Gilpin 1999, 2000) argue that the role of states has not declined and they play a critical role in unfolding of the globalising process. A third school of thought, the transformationalists (Giddens 1999, Held *et al.* 1999, Held and McGrew 1999, Perraton 1999, 2003) tries to depart from the antagonisms that exist between the hyperglobalists and the sceptics. The transformationalists envisage a ‘shift’ (Giddens 1999, Elliot *et al.* 2010) in the functioning of states due to its interaction with the global forces. Thus, the confusion regarding the relationship between the state and the markets in the global age increases

the ambiguity in recognising the emerging role of transitional paedophiles and the need to control them.

Transnationalism has also made its presence felt in the realm of paedophilia. The linkup between Transnational Corporation (TNCs), media, internet, tourism and thriving sex industry are a manifestation of cross territoriality in the global paedophile networks. The transnational nature of paedophilia means that networks forge bonds across borders. The nature of paedophilia is not stagnant: it adapts as relationships between networks become both more flexible, and more sophisticated, with ever-greater reach around the globe. It is accelerated by the process of communication and globalisation. In short, transnational paedophilia transcends cultural, social, linguistic and geographical borders.



**Fig. 2.4: Paedophilia: Countries of origin and supply**

Source: Compiled using [www.mapsoftheworld.com](http://www.mapsoftheworld.com) and Ioannides, D. and K. Debbage (1998), *The Economic Geography of the Tourist Industry: A Supply-Side Analysis*, London: Routledge.

Paedophile networks incorporate a radical approach in dealing with their need and requirements. They claim that they play the role of self-help groups. As a contribution to society, ‘paedophiles help children to release their needs and requirements’ (PIE 1975). By doing this, they help a child to develop his/her sexual identity and meet the requirements and demands of society (O’Carroll 1980: 220). Transnational paedophilia



has raised several important questions pertaining to the emergence of a transnational version of identity, the role of states in co-opting the market forces (Biswas 2002), especially the media and the private sponsors (Gilpin 2003). It also underlines the interdependence between the state apparatus and the market forces (Drakeford and Butler 2011). The needs of market i.e., profit and growth often come in conflict with the most important role of the state i.e., to protect its people. Moreover, paedophile organisations seek to promote sexual activity with children based on consensual sex within and across borders. They condemn all forms of sexual violence against children and advocate the creation and recognition of a mechanism based on reciprocation to allow children to engage in sexual activity.

To paedophiles, sexual violence can take both a physical and mental form. It is usually a silent, hidden, invisible crime that both boys and girls face at home or outside, often at the hands of trusted adults. It includes different forms of misconduct ranging from child pornography to illicit trafficking for gratification of sexual needs or an adult persuading a child to engage in sexual activity and making a child witness any sexual act, to hear, view or read any pornographic material. Negating all such forms of illicit behaviour, a paedophile organisation draws the attention of the state and society to become sensitive towards the love and urge of a man and a boy or a man and a girl and vice versa to engage in mutual consensual relationship (Nambla n.d.). This argument is negated by scholars who posit that despite the implications of its Greek etymology, paedophilia is not a love of children but a lust for them.

The issues raised by transnational paedophile networks relate to identities in the global era explained through the state-market interplay. In the twenty-first century, groups will try to claim their identities, political, social as well as religious within national as well as transnational contexts. The policy makers *vis-à-vis* the players of the market cannot ignore the basic principle that paedophiles will try their best to exist, operate and influence across boundaries and cultures. These acts are heavily negotiated and influenced by challenging mainstream definitions and discourses on the question of child protection. The local paedophiles of the host country start engaging as active nodal points to facilitate the smooth incorporation of demands that come from travelling paedophiles.

A 'transnational imagined community' has emerged taking off from Benedict Anderson's (1983) notion of 'imagined community' in the national context. It is clear

that the emergence of ‘transnational imagined community’ has led to transnational identities and groups as a consequence of the interaction of role of states and the market forces. In this context, the transnational form of imagined community is manifested through the transnational paedophile groups who create common demands and lobby to achieve similar goals. Paedophilia has emerged as a highly contested arena with a very limited consensus regarding its requirements, visions and goals. There are several disagreements over the legitimacy of claims made by paedophile groups which are widely disregarded and disapproved.

The sole aim of the paedophile is not only to sexually abuse children but to establish a permanent link with them by lobbying to reduce the age of consent norm in societies (PIE 1975: 76). In pursuance of these demands, several paedophile networks are spread across the globe. Among the earliest separate paedophile organising attempts were made in the Netherlands, beginning in the late 1950s, which a decade later (and still on-going) developed into national and local workgroups for paedophiles and the sexual emancipation of youth within the Netherlands Association for Sexual Reform. Other organisations formed in response to prosecution of paedophiles in Boston in 1978, have been successful in fighting off attempts by US authorities to suppress them. North American Man/Boy Love Association (NAMBLA) continues to publish its *NAMBLA Bulletin* and organises activities to promote paedophilia (Nambla n.d.). The Paedophile Information Exchange (P.I.E.), organised in England in 1974, was crushed by vicious press attacks and the conviction and imprisonment of its leaders for conspiring to corrupt public morals and was disbanded in 1985.

In response to such groups, a number of countries have introduced national laws and regulations which they feel suit their cultural, legal and political traditions (Halton 2011). In an increasingly interconnected world, paedophiles connect with each other through modes of exchanges, quite new but an easy outlet for attaining services at minimal costs. In taking this position of explanation, it can be seen that an increasing proliferation of children from middle/income countries is made to high-income economies. This results in exploitation of children from economically weaker sections of the world by paedophiles from economies that are far wealthier. The ILO released a report in 2005 which highlighted that 2.5 million children are trafficked across borders for different purposes. Within this number, approximately 1.4 million children are targets of commercial sexual exploitation. Thus, even though tourism is a viable option

for paedophiles, they need not even walk out of their country's borders, since children are trafficked to satisfy their needs within their own countries.

As neo-liberal globalisation expands, countries are forced to address the presence of sexual exploitation facilitated by the information and communication technologies (ICT). If one analyses the percentage of internet usage by high-income and middle-income countries, one can see that the former has a high consumption of internet as compared to the latter. Internet is the source of knowledge. However, its negative implications on children and its effect on radicalising paedophilic activism across the globe has been highly criticised. Every year, around one million children engage in online virtual prostitution (ECPAT 2005). The threats emanating from the Internet and its indiscriminate use is related to exposure of children to violent and sexual material as well as easy target for paedophiles who establish relationship with children by alluring them into online dating, blind dating and other kinds of incentives. Almost 50% of children across the world use pornographic sites and as high as 80% use them to know more about sex (International Save the Children Alliance 2004). The methods of coordinating and organising sexual exploitation has changed over the years. The Internet has become a medium that is used to organise sex tourism by paedophiles (ECPAT 2006). Thus, using the Internet as a mode of interconnecting with each other, paedophiles have managed to squeeze the 'time-space' gap across the globe.

The panorama of the legal approach to child sexual exploitation at the national level is heavily influenced by international law and differs from country to country. However, no matter which legal system is in place, child sexual exploitation is an ever-increasing phenomenon. It is seen that sexual exploitation at the global level is increasing drastically. There is a growth in number of children used in pornography and internet-related crimes (ECPAT 2005). It is necessary to examine national legislation and regulatory regime of several countries from different continents in order to provide a cross sectional analysis of legal framework relating to paedophile networks around the globe.

## **Organisations and Sexual Exploitation of Children**

In the wake of the above-mentioned transnational activities, many global initiatives have been taken to deal with the problem of sexual exploitation of children. A norm is not merely born out of a desire, but it owes its origin to need and requirement. The

implication of transnational paedophile activism on children rather than countries and its economies forced international and regional organisations, non-state actors and several other stakeholders to take interest in promoting a cooperative structure and mechanism which deals with exploitation of children. The creation of laws at the international levels highlight the increasing importance of the need to protect children at the global level. Its internalisation across domestic jurisdiction is credited to the policies made by the state in cooperation with intergovernmental organisations and non-state actors and groups. There are two crucial points to understand in this process. Firstly, several domestic factors contribute in the successful implementation of these laws. These include political, social, legal and economic constraints. Secondly, even though a country adopts an international law it might not be able to protect its children effectively as its goal to protect children clashes with its other domestic self-interests, e.g. growth and development.

The next section will deal with the efforts made by international organisations and non-state actors in mitigating sexual abuse of children. It will look at various ways in which the international community has dealt with child sexual abuse. It also examines the manner in which the parameters of child rights have changed within the changing dynamics of international legal, economic and political institutions of the society. In this section, the norm against sexual abuse shall be defined and articulated.

### *International Organisations*

The challenges faced by a child during the 1970s and 1980s prompted several international actors to re-examine protection policies for the child. The pattern of threats to a child were undergoing several changes during this period. The idea of the child as a 'bearer of rights' was replaced with the idea of 'child in need of protection'. Protection meant a strong international strategy in dealing with the threats that the child was facing. Several attempts have been made to deal with the problem of sexual exploitation prior to the 'rights-based approach' in 1970s and 1980s. The first step in carving out safeguards for children was in 1924. The League of Nations adopted the Geneva Declaration on the Rights of the Child, 1924, which stated in its Preamble that children require special safeguards and care, including appropriate legal protection, before as well as after birth. It was also stated that all countries of the world should believe in the fact that 'mankind owes to the child the best it has to give' (Loaw library Congress 2007). It was considered imperative to involve people from local groups and

authorities in order to achieve this aim.

The International Convention for the Suppression of the Circulation of Others, 1923 and the UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others, 1949 were among the two earliest attempts which dealt with the problem of women and child trafficking and exploitation under one single umbrella. It was with the 1956 Supplementary Convention on the Abolition of Slavery, The Slave Trade and Practices Similar to Slavery that children were recognised as a separate category. Firstly, they were classified as ‘children and adolescents’ and secondly, they were protected against all sorts of exploitative measures like child marriage, slavery and bondage.

These goals were reflected in the United Nations Declaration of Rights of Child (UNDRC) in 1949. This provision highlighted some of the key needs of the child as a member of society. It specified that ‘special protection’, ‘opportunities and facilities, by law and by other means,’ and ‘conditions of freedom and dignity’ are basic necessities of a child. In addition to these, a child is ‘entitled to a name and nationality; to adequate nutrition, housing, recreation, and medical services; to an education; and, for the handicapped, to ‘special treatment, education and care’ (Article 5: 2).

The Minimum Age Convention was drafted in 1973 with the basic aim of abolishing child labour. All member states had to draft and ‘pursue a national policy designed to ensure the effective abolition of child labor and to raise progressively the minimum age for admission to employment to a level consistent with the fullest physical and mental development of young persons’ (Article 1). Article 3 (1) of this convention used the word ‘moral’ as a parameter to exclude children below age of 18 from being employed in certain sectors while allowing children to do ‘light work’.

This convention has been seen as a landmark in international law against sexual exploitation of children. It widened all the earlier existing horizons and entered into the unprotected areas of child life. Identity (Articles 7 and 8), freedom of expression (Article 13), special protection (Articles 20 and 22), rights of indigenous children (Articles 8 and 30) and ensuring a just trial (Article 40) were taken into the ambit of legal protection. This convention became the basis of several upcoming deliberations on sexual protection to children in the UN and in other regional and international forums.

In 1979, UNICEF celebrated the 'International Year of Child' bringing up exclusively to the forefront the concerns of children. However, the idea of positioning the concerns of children to the world stage was not a UN initiative. It was raised several years before by Secretary General Canon Moerman, who was then heading the International Catholic Child Bureau (ICCB) at Geneva. It was in 1979, after celebrating and dedicating years to women, refugees etc. that UNICEF was given the task to do something for children. However, these were more in the nature of fashionable attempts to express compassion and concern towards children as UNICEF, then headed by Harry Labouisse, was apprehensive as it would be an expensive, laborious and controversial task that would politicise the then unpolitical environment at UNICEF (Geddes 1981: 2). Thus, this initial event was merely a media campaign and was not recognised as an event of international importance owing to this controversy.

However, with an increasing interest in tourism among people, several cases of sexual exploitation emerged in the realm of politics. The tourism sector became one of those sectors that perpetuated sexual exploitation of children. This prompted the UNWTO to declare a Tourism Bill of Rights along with the Tourist Code (1985). Later the UNWTO also released a Global Code of Ethics that directs all states to respect and protect the rights of vulnerable groups and prevent sexual exploitation of children (Article 3, Clause 2).

The first organised international initiative in devising a strong international legal mechanism for children was taken up by the devising the UNCRC in 1989. As the largest existing international organisation,<sup>4</sup> the UN has conducted extensive research on the issues of child sexual exploitation and child sexual abuse content and developed international standards for protecting children from all forms of sexual exploitation and sexual abuse. The Convention raised two major issues. Firstly, it laid down that 'state parties had to undertake all measures to protect child from all forms of sexual abuse and exploitation' (Article 2). Secondly, all states were required to initiate 'national, bilateral and multilateral measures to deal with the problem of sexual exploitation of children' (UNCRC 1989: Article 11). Thus, with this initiative the issue of child prostitution, child exploitation and illegal sexual practices were brought into light. It is

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<sup>4</sup> In 2017, the United Nations has 193 member states with South Sudan joining in 2014 as the newest member of UN.

estimated that this triggered several international bodies and actors to deliberate on issues that cause sexual harm to the child.

Since then till today, several treaties, conventions and protocols reiterate the provisions of UNCRC as the most crucial parameter in dealing with sexual exploitation of children. The linking thread of all these initiatives is an underlying language that harps on protection of children from all forms, structures and mechanisms that could harm their sexual sanctity. The characteristic of policy initiatives in dealing with children's problem can be compartmentalised under two heads. Firstly, the rights-based approach which focusses on justifying rights emerging from following a rights-based model in society. The relationship between state or international body and the child is a guarantee of a minimal standard of claims. Here, international bodies participate as framework providers to states, institutions and other organisations in relooking at the rights of a child, to protect them and ensure fulfilment of each of these claims. Secondly, a needs-based approach that assesses the needs of a child and prioritises it over a right. Children's needs change with age as several physical, emotional as well as biological changes takes place in them. Thus, by clubbing all the rights and confusing them as needs could be seen as a controversial loophole. In certain cases, especially in democratic states, there is a lot of confusion between the needs of a child and its rights. In the case of children, the continuum between needs and rights tends to become very thin. It is an accepted understanding that sex is not a right of the child but becomes a need with age. Hence, even though a teenager might have feelings of intimacy towards an adult, it is highly disregarded as his/her right till he/she attains the legal age of engaging in sex of the respective country.

The study concludes that a child's rights are more relevant than needs, especially with regard to sexual predators who have a long-lasting impact on the overall personality of children. A child's sexual need cannot be foregone. Nevertheless, engaging in sex before legal age impinges upon the fundamental and crucial right to protection of children. Thus, in case of a clash between needs and rights, the latter should be given weightage over the former. Notwithstanding this, it has been presumably accepted that rights still remain as one of the integral needs of a child. It is clear that needs require approval from society and should be morally accepted in order to be legally viable. Thus, paedophile claims to reduce legal age of consent will compound their right to

have sexual access to children which is rejected by the state as it leads to inequality and unfairness.

As the next step in articulating legal provisions against sexual exploitation of children, the UN adopted The Optional Protocol to the UNCRC on the Sale of Children, Child Prostitution, and Child Pornography (OP-CRC-SC) 2000 (Sex Trafficking Protocol) and the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict (OP-CRC-AC) (Child Soldiers Protocol). Both of them deal with the problem of child exploitation at two levels, one dealing with sex trafficking and the other on child protection in areas of armed conflicts.

In explaining sex trafficking, the protocol begins with its allegiance to the UNCRC 1989 and goes on to highlight ‘that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation’ which is proved by ‘the growing availability of child pornography on the internet and other evolving technologies’ (Article 15). In this context, the protocol lays down binding provisions on the UN signatory member states to take a strong stand in reducing all factors that promote sexual exploitation of children. The Child Soldiers Protocol reveal the ‘the harmful and widespread impact of armed conflict on children’ (2002: 1). It compels states to withdraw the role of children in armed conflicts and prevent their recruitment in armies or putting them in places where there is ‘hostility’ (Article 4). As against the earlier protocols it does not accept only 18 years as the defining age for recruitment but ‘the year of majority in its respective country’ also as a criterion for its application. This leaves room for states to define what constitutes trouble for the child, since age of majority is under a country’s domestic domain and can therefore be manipulated.

The content of child sexual exploitation was also defined in provisions of the UN’s Optional Protocol to the Convention on the Rights of the Child (2000) on the sale of children, child prostitution and child pornography (OP-CRC-SC). It clearly highlighted sexual exploitation of child as ‘any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes’ (Article 4). The main aim of this protocol is to replace the earlier drafted UNCRC and expand the ambit of state’s role to play a constructive role in dealing with the sexual exploitation of children. The document is a standing testimony and reminder of legal framework that member states can incorporate for meeting their objective of child protection.



UNWTO is the specific organisation under UN which works for protection of children by dealing with the problems emerging from 'flows and networks'. Tourism, as already mentioned has dual effect. On the one hand it brings prosperity to its people and on the other hand it makes a group of people within its borders vulnerable to different types of threats. The UNWTO drafted the Global Code of Ethics for Tourism in 1999 and Article 2 of the Code explicitly states that 'the exploitation of human beings in any form, particularly sexual, especially when applied to children, conflicts with the fundamental aims of tourism and is the negation of tourism' (UNWTO Article 2.3). With this, all attempts to exploit children by paedophiles within the ambit of tourism were addressed.

Also, as its name encapsulates, the International Convention for Economic, Social and Cultural Rights (ICESCR), 1966 as a part of UN initiative, deals with the economic, social and cultural protection to all human beings including children. Its basic premise is on the 'recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world'. Considering dignity as the foremost essential principle to children under Article 10, the covenant states that '[t]he widest possible protection and assistance should be accorded to the family... particularly for its establishment and while it is responsible for the care and education of dependent children' (item 1, in part). Thus, by ensuring focusing on non-discrimination, highest attainable 'safety and health standards' and education (Article 13 (1)), human beings can preserve the dignity of a child.

The provisions that focusses on civil and political rights were protected by the ICCPR, 1966. As a beneficiary of justice in society, this international initiative obliges all its members 'to respect and to ensure to all individuals within its territory and subject to its jurisdiction'. Acquiring nationality of a state is a political right of all children born within recognisable sovereign borders. In this regard, all its provisions deal with the idea of providing justice through necessary provisions in law and administration. Punishment for violating laws to a child should be 'appropriate to their age and legal status' (Article 10(3)). Further, states need to keep in mind that '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 12).

The ILO had taken up the issue of child labour as early as 1924 when it condemned the

idea of child labour as a hindrance to the growth and development of a child. However, it altered the plausible solution to child labour in 1973, when ILO Minimum Age Convention 138 was ratified. This replaced ‘all forms of existing conventions and proposed ‘minimum age for any type of employment... which would be 18 years’ (ILO 1998, Art. 2). The ILO marked a milestone in 1999 when it included ‘sexual exploitation’ as a form of ‘labour’ and forced countries across the globe to impose ‘standards and regulations to end commercial sexual exploitation of children’ (ILO 1998 Art. 3(b)).

In the 1980s there was a surge in statistics accounting for HIV/AIDS in developing countries. This prompted the World Health Organisation (WHO) to associate itself with the problem of sexual exploitation of children. It devised a systemic approach in dealing with the problem. It referred to child maltreatment as ‘the physical and emotional mistreatment, sexual abuse, neglect and negligent treatment of children, as well as to their commercial or other exploitation’ (WHO 1997: 6). It recognises child maltreatment as that problem which is perpetuated ‘within known relationship’ especially the ones who nurture a child. The 2010 report released by WHO states that weaker economies witness high rates of sexual violence cases by people who are intimately connected to children, especially girls (WHO 2006: 3). Further sexual violence has a long-term impact on the mental as well as physical health of children and WHO makes deliberate attempts to instruct member countries to create policies that prevent sexual violence of any type (WHO 2013: 7).

### *Regional Organisations*

Regional cooperation has been envisaged in all quarters of the world to mitigate the problem of sexual exploitation of children. Regionalism becomes crucial with the contemporary understanding of problems as flows. Cooperative mechanisms and strategies like the creation of regional task forces and mechanisms to share information on common sources of threat to children’s safety, employing ways to collect information about child prostitution agencies and the use of media to create awareness at regional level can help in identifying paedophiles who escape laws and travel across borders.

The African Charter on Rights and Welfare of Child (ACRWC) is the first attempt on dealing with provisions of child rights at regional level. It states that ‘the child occupies

a unique and privileged position in the African society’ and requires legal protection as well as ‘particular care with regard to health, physical, mental, moral and social development’. The ACRW defines a child as ‘every human being below the age of 18 years’ (Article 2). It talks about a plethora of rights that should be guaranteed to a child from the developing countries point of view and concerns. It rejects subjugation of children belonging to a particular culture and condemns, ‘inferiority or the superiority of either of the sexes or on stereotyped roles for men and women’ (Article 5(a)).

The African charter on Human and People’s Right (ACHPR) 1981 popularly known as ‘Banjul Charter’ is a guiding compass to all individuals to ‘[t]o preserve the harmonious development of the family and to work for the cohesion and respect of the family; to respect his parents at all times, to maintain them in case of need’ (Article 29(1)). It obliges the families to take responsibility for children in Africa. Relying heavily on international provisions for child rights, it sets up an indigenous model of protection for children (Article 18(3)).

A Protocol to the African Charter on Human and Peoples’ Rights on the Rights of Women in Africa was drafted for the removal of ‘any practice that hinders or endangers the normal growth and affects the physical, emotional and psychological development of women and girls. It directs all states in Africa to work *against sexual abuse, rape, exploitation etc.* and to ‘ensure that in times of conflict and/or war, such acts are considered war crimes and are punished as such’ (Article 4(c) and (d)). Further, it motivates states to adopt measures that would provide a positive direction to children, girl child in specific and women through ‘education and training at all levels and in all disciplines’ (Article 12) (emphasis added).

In South Asia region, measures for protection on children include ‘regional arrangements to assist members’ so that proactive action can be taken against perpetrators of sexual exploitation against children. The SAARC countries focus on mobilising individuals and groups to protect the child from abuse, exploitation, neglect, violence, discrimination, trafficking, and child labour as drafted in its charter adopted in 2002 SAARC summit. They motivate member states to set up appropriate and child-friendly systems for juvenile justice, registration of births, child participation, etc. States should encourage local media to cater to the needs of children by providing them with information that is socially and culturally beneficial to the development of the children. However, one limitation in such regional setups are that they persuade states

to adopt statutes only in accordance with domestic laws, constitutions and other provisions.

Association of South-East Association Nations (ASEAN) has envisaged a proactive role in dealing with the problem of sexual exploitation of children owing to the increase in number of sexually exploited children in this area. It is 'recognized that the ASEAN area was one that most suffered with the problem of sexual exploitation of children in the world and for that reason the ten countries joined their efforts to fight this phenomenon' (ASEAN website n.d.). ASEAN launched collaboration with several NGOs in order to create a strong mechanism to deal with the problem of sexual exploitation of children. The supplying nodes in this entire situation are those who belong to the private sector like hotel groups, brothel owners etc. Thus, the most significant step in ASEAN to combat this was 'with the involvement of the private sector'.

A directive to uphold 'interest of child' in society was devised under the Convention for the Protection of Human Rights and Fundamental Freedoms, also known as the European Convention on Human Rights (ECHR). It compels all participating states to 'secure everyone within their jurisdiction' (Article 1). Following a shift from its earlier strategies, this convention focused on 'legal protection' for a child to enjoy all forms of freedom as a member of the society.

At the European level, there are several important policies to be considered: The Council of Europe (CoE) Convention on Cybercrime 2001, The CoE Convention on the Protection of the Children against Sexual Exploitation and Sexual Abuse 2007, The European Union (EU) Council Decision of May 2000 to Combat Child Pornography on the internet, The EU Council Framework Decision of December 2003 on Combating the Sexual Exploitation of Children and Child Pornography (also known as the Framework Decision) and The European Directive on Electronic Commerce 2000 are all initiatives by the CoE. The EU has also established several directives and decisions as effective tools for combating sexual exploitation and abuse of children because they give specific definitions of offences as well as provisions requiring punishment for criminal behaviour. In addition, the European Directive on Electronic Commerce serves additionally as a legal mechanism for limiting Internet Service Providers (ISP) liability for illegal internet content. The existing guidelines do not take into consideration that internet is a public forum that operates at the global sphere and illegality of any content

is a country specific consideration. The ambit of the term illegal is large and complex, it involves 'child nudes', 'sex porn videos' etc. along with hate speeches, terrorist activities and other unacceptable communications. Even though ISP's mechanisms allow for more effective prosecution of perpetrators, the major dilemma is the nature of illegality of content which might not be universally valid. Generally, non-local languages and controversial taglines can be used to circulate under 18 porn material to all sections of society.

### *Role of Non-State Actors*

Amnesty International raised the issue of 'coercion' vis-a-vis 'consent' in crimes such as rape and sexual violence against children. Borrowing from Article 3 of the UNCRC, it accepts the definition of rape as 'acts of violence based on force, threat and coercion' as against 'consent'. According to this approach, which has been categorised as 'legal approach', consent alone is not the yardstick in measuring violence or abuse. If in some cases 'force, threat of force or coercion' has been used as a principle it still amounts to violation and the perpetrator can be subjected to punishment. This also helps in prosecuting perpetrators in settings where 'statutory rape provisions, which specify an age limit below which it is assumed a child cannot consent to sexual contact'.

The aspect of sexual exploitation expanded with the End Child Prostitution and Trafficking (ECPAT) campaign which became one of the pioneers in working against commercial sexual exploitation of children. It began as a non-governmental initiative. It was the first body to recognise that 'while sexual violence is a particular manifestation of the broader framework of gender-based violence, and thus affects girls greatly, it is important to appreciate that boys can also be victims (ECPAT 2005). ECPAT expanded its horizon in 2004-2005 when it issued guidance 'on preventing sexual violence against children in emergencies'. This was in response to the threats on children as a result of civil war and war like situations in different parts of the world. Earlier ECPAT had issued guidelines 'related to emergency response' wherein volunteers and policy framers were requested to ensure proactive measures in dealing with their respective responses to emergency like situations. In the process of this shift, ECPAT proposed the role of 'local organisations' in protecting children from exploitation. In 2017 ECPAT has stressed on the role 'religious leaders', 'civil society organisations' and 'faith-based organisations' can play as they become transnational in

their operations in dealing with the menace of online sexual exploitation of children (ECPAT 2017: 29).

The niche in discussing the exploitation of children in tourism broke with private and public-sector cooperation mechanisms. Several multinational corporations, private groups and transnational private entities have seriously involved themselves in fighting against the problem of sexual exploitation of children in tourism and otherwise. Following the pattern of concern raised in UNWTO code of conduct for tour operators, restaurant and hotel chains, international business forums joined hands to deal with the problem. Several international treaties and codes of conduct talk about topics such as 'travel ethics' which clearly underline the foremost duty of a traveller to respect the dignity of children and avoid any actions that goes against a child's dignity and modesty. In Thailand hotels and rental residential accommodation associations stipulate rules and procedures with visible 'signboards' that reiterates a deep-rooted resentment of people of Thailand against any form of indecent and inappropriate actions towards their children.

Planet 21, which is the Sustainable Development programme started by Accor Hotel, 'stresses the urgent need to change production and consumption patterns and works to inform and train employees, raise awareness among customers and suppliers, develop relations with public authorities, and facilitate the integration of minors in the process' (UNWTO 2014). This influenced several other hotel chains to adopt an ethical practice to deal with transnational paedophiles who travel with the aim to exploit children. Expressing similar concerns, the 'Marriott's Corporate Social Responsibility (CSR) program was adopted by which 'the company introduced the Principles of Responsible Business, a set of standards encompassing Marriott's business ethics, workforce, human rights, social responsibility, procurement practices, the environment and to support children at risk' (). The idea of 'risk' indicates common sources of threat that children face within hotel setup. The hotel group aimed at creating an environment that fought against commercial sexual exploitation of children. It aimed at combining several activities and programmes that helped in providing safeguard to children who were in close proximity to threats of sexual exploiters.

The Worst Forms of Child Labour Convention (WFCLC), 1999 went a step ahead in abolishing exploitation of children involved in labour. It was drafted with the aim 'to complement the Convention and the Recommendation Concerning Minimum Age for

Admission to Employment, 1973, which remain fundamental instruments on child labour'. It clearly states all those activities that comprises 'worst forms of child labour'. Borrowing from the mandate of UNCRC the term 'child' is used for all children below 18 years of age (Article 2). Article 3 of the convention considers 4 'worst forms of child labour': i) 'sale and trafficking of children and forced labor (including forced recruitment for armed conflict)'; (b) 'Child prostitution or for pornography or pornographic performances'; c) Using a 'child for illicit activities such as drug trafficking'; (d) All forms of work that 'harm children's health, safety, or morals' (Article 3). It also highlights rehabilitation, vocational training and other effective standards for dealing with children who have been subjected to 'worst forms of child labour'.

### *Analysing the Limitations*

Several scholars have pointed out the limitations of the international work done to mitigate sexual exploitation of children at the hands of paedophiles. Firstly, the conventions and treaties have failed to define 'sexual exploitation' in clear terms. As with UNCRC as well as ILO convention, the paedophiles have time and again attempted to mutate the term exploitation. Among paedophiles, the term 'sexual exploitation' is perceived as 'mutual sexual gratification'. Thus, they start negotiating their demands by stressing on the importance of paedophilic connections with children.

Secondly, these international mechanisms do not take into consideration the reason for lack of enthusiasm on part of certain economies to strictly incorporate these measures. The implementation of these norms would mean compromise with large sources of income. In developing countries, lack of funds leads to lack of effective legal criteria. Also, sexual exploitation of children by paedophiles, generally through tourism, leads to foreign reserves and high economic growth values. Thus, prior to implementation of the norm against sexual exploitation of children, developing economies tend to focus on other crucial interests.

Finally, one of the chief limitations to a successful initiative against sexual exploitation is inconsistencies in the age of consent. High number of adolescents fall outside the ambit of protection if states try to lower the age of consent.

## Conclusion

IR theory has abated the role of agency in analysing the events of the world. The rationale for looking at the world through transnational activities is quite simple and clear. It has been seen that any form of interaction between high-income economies and middle/low income economies is riddled with exploitation. There is gradual breakdown of this divide at macro level when we look at the process of sexual exploitation of children. Whether it is a high ended economy like USA, Norway, Germany or Australia or a middle/lower economy like India or Thailand, the ramifications of sexual exploitation of children is globally evident. However, several crucial nuances emerge when we look at this whole process under the increasing activities of transnational paedophiles.

Thus, this chapter has mapped the discourse surrounding the idea of a child. It has argued that the ideas that float in the world about the child and child rights are varied. In order to understand the problems that the child faces as a member of the international community, the theories surrounding its needs, wants and requirements need to be prioritised and contextualised. The discourse on child is necessarily the product of a unidimensional view about them. The politics of age and other such related criteria make children vulnerable. Despite have similar identifying criteria; children of high-income economies are safer than those of lower income economies.

Situated in this context, the role played by international organisations, non-state actors and several regional entities was discussed. In trying to carve out a proactive mechanism at international level, these organisations have sought to deal with the problems that children face in society. Thus, during the period between 1945 and 2017, 175 countries amended their legal provisions regarding sexual exploitation of children for having effective implementation and for achieving the goal of child protection

However, despite the daunting task to mitigate the menace against children, nothing much has happened. The chief reason for this inability is the fact that no universal understanding about paedophile or transnational paedophiles exists. It is not easy to locate a paedophile Even after a paedophile is located, the problem in dealing with the situation lies in the clash of laws, wherein one would be following different arbitration methods and modes of evidence. It can be postulated that the UNCRC and other international initiatives emphasises the requirement to look at children as that section



of society who should have equal access to all fundamental rights. The idea to look at paedophiles as adult members of society who are biologically wired to be attracted to children is a flawed approach. However, this is not an easy question to answer. It is important to draw a distinction between sexual attraction and behaviour when answering this question. At the same time, the law can balance this emphasis on treatment with reasonable restrictions in order to protect children. Moreover, paedophiles who do offend, should be subject to appropriate punishment for the crime.

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## **CHAPTER 3 – GERMANY: BALANCING CHILD AND PAEDOPHILE RIGHTS IN DISCOURSE, LAW AND PRACTICE**

### **Introduction**

In this chapter, the policy of Germany towards paedophiles and its effect on children will be analysed. The chapter attempts to also look at German child protection policy; and in order to do this, it is pertinent to understand how German identity impacted different groups within its population, in this context children and how it is perceived today. German identity is similar to Anderson's (1983) definition of a nation being an imagined community. This imagination is reflected through several narratives and discourses which underpin the idea of a nation. In looking at Germany's approach towards children, both within its borders and those coming from outside, one can see the creation of several discourses. In this regard, Germany's approach to children is the product of a battlefield where competing discourses wrestle through their own logics and interests (Bancroft 1978: 66). In an economically stable and developed world, where the state is troubled by minimal foundational problems, children become less vulnerable (Bales 2000) and this is reflected in the case of Germany. Are children not belonging to the German nationality equally safe from German paedophiles? Does economic stability and strong legal mechanisms ensure a better child protection record for Germany but only with respect to its own (i.e. German) children? The answer to these questions problematise universal claims of childhood protection and child rights against sexual exploitation.

There has been a surge in the number of vigilant arrests of paedophiles in Germany. Over the years, several paedophile rings have been busted and charged on criminal grounds (AFP 2005). Existence and operation of a large number of paedophile groups across the country exhibits an unconventional behaviour pattern among Germans (Appelt and Strauss 1988). Paedophiles seek sexual access to children and the statistical evidence points suggests a considerably large number of abused children in Germany. The perceived threats posed by paedophiles is pertinent and the ramifications are visible across Germany. In 2005, out of 300 sexually abused children in Germany, 75% belonged to other nationalities like Thailand, Croatia, Slovenia and other East-European countries, that have comparatively poorer economies than Germany (BKA

2005). The exploitation of children by paedophiles is witnessed within the tripartite framework of child prostitution and child sex tourism, child pornography and child trafficking (Quayle and Taylor 2002; Robert 2010; Thyen and Irene 2003). Germany has played an outstanding role in protecting its own children from sexual abuse but it has been unable to protect children who are non-German both within and outside its border as several German paedophiles travel to different countries and exploit children in foreign lands due to easy accessibility and reach. Germany has been able to curb this menace within its borders as it has enforced stringent laws for protection of its children. There are several governmental initiatives and popular responses to threats by the paedophiles. These initiatives have exhibited a devoted concern among Germans to protect children. Its commitment to international and regional conventions, especially European initiatives, is clearly reflected in German constitutional guarantees (Edith 2007). A strong and generous welfare system (Trome et al. 2011) towards children has ensured a protective net for German children. However, these initiatives come under severe scrutiny when the question of immigrant children is taken into consideration (Williamson 1998). Child trafficking is one of the most rampant processes that highlight differences in approach towards children belonging to German nationality as opposed to children of non-German nationalities. The asymmetries in Germany's approach to children imply distorted images of concerns and leads to the notions of 'our children' and 'their children', the former of German nationality and the latter belonging to other nationalities.

The chapter has been divided into four sections. The first section of the chapter describes child rights discourse in the context of Germany. It looks at the parameters of child rights and the way in which they have been covered to ensure a holistic inclusion of children in the German society. It also looks at the meaning of paedophilia in Germany. It examines the way in which paedophiles became a part of German history and how this has led to the abuse of children today. It also refers to the pattern of regulation of paedophilia followed by the German state. The second section discusses protection mechanisms of children in legal proceedings, civil codes and criminal codes. Further, it provides a historical review of international conventions on the protection of the rights of children and examines whether Germany has joined the relevant conventions and, more importantly, if it has been able to live up to the commitments set out by the conventions that are a result of several centuries of efforts by child rights

activists. The third section is a critical insight into the points of interactions and exchanges among paedophiles and children within a tripartite framework and highlights the politics within this process of exchange. Finally, the last section gives a summary of the chapter.

## **Child Rights Discourse in Germany**

The reflections on the mainstream and accepted knowledge on paedophilia in Germany is the product of several cross-points. The creation of truth on 'paedophilia' as it stands today is based on a pluralist approach which clearly highlights consistent creation and re-creation of the concept of paedophilia. In other words, the discourse on paedophilia as it stands today is based on several narratives born out of institutions, individual agencies, cognitive setups etc. Further, power plays a crucial role in determining which narrative or expression becomes acceptable to the mainstream understanding of paedophilia. Several notions held in the past, accepted in the present and estimated to evolve in the future has been due to the union of context and power relations which produce knowledge on paedophilia. Thus, the paradigmatic understanding of paedophilia, its impact and significance in Germany is understood by looking at the way it has been perceived by the entire society.

The Federal Republic of Germany (FRG), popularly known as Germany, is one of the most influential countries in Europe and the world. The World Bank (WB) categorises Germany as a high-income economy and it ranks 4th in the Human Development Index (HDI) (UNDP 2017). It is considered to be a child-friendly country and has attracted people from all quarters of the world as a major tourist destination. By encapsulating a generic range in perceiving rights of protection to children, Germany creates an image of its own self and the nature of its own agency (Kingsley et al. 2003: 89). Therefore, to make sense of German's child rights policy and its protection policy, it is imperative to take into cognisance its historical identity and approach to children.

The German history dates back to a rudimentary tribal setup with a simple and self-asserted form of lifestyle (Sereny 1985:71). The transition to the Holy Roman Empire and the division of Germany into several provinces in the early Middle ages was characterised by several features. It was Napoleon's efforts that revamped the face of Germany, united it under a central unified leadership and formed a strong German Empire (Deutsches Kaiserreich). The roots of this empire were shaken in 1918 with the

end of monarchic rule and the establishment of democracy by the Weimar constitution. The failure of Germany in World War I (WWI) became the stepping stone for Nazis who came to power in 1933 under Adolf Hitler and his racist National Socialist German Workers Party. This set forth a terrain of self-construction as well as self-destruction in Germany. On the one hand, it revived the German state from the humiliation of WWI but on the other hand, it completely destroyed the democratic spirit of Germany and led to its fall, for the second time, by the end of World II (WWII).

Ever since its formation in 1949, Germany has been a federal republic comprising of several *Länder* or states, numbering 10 at the time of FRG's establishment and 16 after reunification with the German Democratic Republic (GDR) or East Germany. The plight of Germany was worse when it was divided into east and west Germany and this state of affairs continued all throughout the cold war period which had a great impact on the people and the society (Goode 2011). The FRG, formed in 1949, was a liberal and democratic nation with a strong anti-inclination for Nazism. Germany became reunited in 1990 with the fall of the Berlin Wall. In this unipolar world, Germany stood united as a single and strong nation surrounded by important neighbours. Germany has a high degree of political consciousness among its citizens and a politically stable and informed citizenry provides ample scope for the German state to look into the problems of child rights against sexual exploitation (Hallett 1989). Lack of corruption, strong legal mechanisms and accountable enforcement agencies create a proactive atmosphere in dealing with child rights (Harnischmancher 2010). Moreover, being a democracy Germany provides room for the existence, operation and flourishing of diverse opinions represent by the different party ideologies and several debates constantly take place on issues of child rights and paedophilia.

Today, Germany has a stable economy, the strongest in Europe. Its population indices, growth rates, capital accumulation and Gross National Income (GNI) parameters show that Germany is an economic power. In this regard, its budget allocation shows high apportionment for social security programmes and welfare policies (Trome et al. 2011). Children within Germany have assured sustenance and guaranteed access to all basic necessities and resources including food, housing, educational opportunities, medical care and affluent lifestyle. Based on its economic stability, Germany has built a welfare state which is proactive in framing policies that aims at providing security to children.

Germany celebrates an emancipated and liberal culture with high level of tolerance to alternate forms of thinking and lifestyles (Hiensohn and Kinderschutz 2003). Since time immemorial, homosexuality, bi-sexuality, paedophilic inclinations and tendencies have found space within the German culture (Helfer and Ray 1980). Such liberal discourses have been promoted, propagated and practised by people within all social circles of Germany. In this regard, Germany exists as a progenitor of ideas, values and beliefs which do not find space in mainstream discourses (Hilton and Zarr 2011). This cultural liberty in the form of tolerance and operation makes Germany the seat of origin of several unconventional groups. The emergence of paedophile groups has been credited to the existence of liberal culture in Germany (Holmes and Slapp 1998). Despite its firm stand against paedophilia, the German state has several paedophile groups within its borders and it has made serious attempts to govern their operation.

It is clear that several currents of thought, complimentary to each other, constitute Germany's approach to defining children. In constituting an understanding about the child and its rights, Germany tries to meet all global and international standards. Penal Code Federal Republic of Germany (PCFRG), section 19 states that a child is anyone between the age 'null to 14 years', notwithstanding considerations of gender (Currie 1994:71). It clearly makes a distinction between children and young individuals, who are aged between 14-18 years, for the purpose of law. This definition of a child is based on a body of universal liberal order. Thus, Germany not only reflects a liberal universal apogee of the current global order in terms of its norm internalisations, but also ties the German state perpetually to a constitutional bondage towards children (Helfer and Ray 1980: 79). On the other side, the realisation that a child is someone between 0-14 years is not an exception. This generic understanding is inherently constitutive of child rights protection discourses. It clearly highlights that states inherit a legacy of ensuring a radical transformation in the way mainstream has dealt with the children (Heinsohn-Kur et. al 2003).

Until recently the idea of rights was restricted to limited sections of society, i.e. family. Several reasons prompted the need to bring children into the ambit of discourse on rights. With the rise in statistics on child violence, the German state realised that children were a vulnerable segment of society devoid of protection against sexual abuse and exploitation. Germany's approach to children are heavily rooted in the evolving nature of the German state. The dilemma between a 'welfarist German state' and a

‘German state without welfare’ was faced far back in 1880s under Chancellor Otto von Bismarck (Bremmer 1980). The need for creating a social security net to the existing structure of state protectionism led to the related coherent idea of providing benefits to Germans. In the case of children, social benefits and security against all forms of abuse got resurrected by the Bismarckian Social Act, 1883 providing insurance, safety and benefit to children of the administrative staff (Bremmer 1980).

As a representational practice, children’s right to protection against sexually exploitative processes was created in 1829 (Longerich 2012). Childhood, as a phase requiring protection, began with the tripartite engagement between the different sections of society namely the German bourgeoisie, military and the liberals who viewed it as an issue of concern at different points of time. However, the child, in need of a secure physical, emotional and mental environment, was recognised as a category requiring immediate redressal with the establishment of Society for the Betterment of Morally Neglected Children (*Verein zur Besserung sittlich verwahrloster Kinder*) in the year 1829 (Johnes 1996; Wolf 1997: 212). This organisation recommended that vulnerable children should be segregated because they were targets of potential harm by others. Thus, children were constructed as vulnerable sections of society in relation to the other sections of society (McCoy and Stefanie 2009).

However, the modern child policy against exploitative elements does not merely reflect a historical perspective. In the course of several decades, Germany has time and again revised the construction of discourses on childhood (Longerich 2012). It is also based on a conscious effort by the state to construct official narratives about a child and its right in German society (Bremmer 1980). Today the treatment of children, both German and non-German, not only projects a nation’s perception, but also highlights a stark difference of how the other is different and simultaneously marking what the self is made of (Davidson and Gottschalk 2011). To understand Germany’s child policy discourse, it is suggested that an understanding of the relationship – even if tautological – between child policy and national identity serve as our point of departure. Thus, several nuances emerge wherein ideas like our children, i.e., those belonging to German race as against their children, i.e., those not of German origin, become evident. German convicted paedophiles have to abide by several layers of regulation to continue to be a part of German society yet when it comes to travelling abroad there is no agenda adherence or regulations.

The approach of Germany towards children in the earlier eras had a bias towards dealing only with the needs of children and hence had a limited scope and ambit. In this regard, entitlement to basic needs like food, shelter, education were the basic needs that the state had to take care of. This attitude changed with the seeping in of the modern era where capitalism and industrialism swept Europe and the understanding that children were at threat from emerging exploitative processes of labour came to the forefront. The treatment of children under the rubrics of the industrial era was overlooked by German state to the extent that, even semantically, children in the nineteenth century<sup>5</sup> policy initiatives were not considered as victims of exploitative processes under the emerging industrial initiatives (Bremmer 1980). It was in the light of these complexities, not surprisingly, that the discourse surrounding children consciously expanded ideologically and temporally to incorporate a complete revamp in the understanding of children's problems in the twentieth century. Accordingly, a complete change in the attitude of government agencies, authorities and groups included counselling, care and protection were seen as vital at all nodes of interaction between children and others. Thus, Germany attempted to identify sources of potential harm to children and tried to deal with each of them by creating laws which were passed making education till the age of 9 mandatory for children and legislations prohibiting children below 9 years of age from working in heavy industries (Dietz 1973).

In contradiction to this, the Nazi regime in Germany negated all earlier attempts on child protection. It was based on a racial ideology with an extremely different approach towards children of Jews and non-Jews (Longerisch 2012). The need for protection, abjection of maltreatment and social security was of utmost importance, but only to the children of the 'privileged Aryan race'. Apart from the racial dimensions of treating children, there was engagement with an alternative system thus rejecting the foundations of the previously existing systems. Thus, several new dimensions for the protection of children were added in this period (Bremmer 1980). The integration of the German Association for the protection of children with the National Socialist People's Welfare Federation led to the creation of a new foundation for ensuring child rights and child protection in 1939. Child abuse was then open to multiple

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<sup>5</sup>Industrial Revolution began in Germany much later than all European countries by the 1870's. Once it gathered momentum it outgrew all other European countries to become the largest manufacturer of goods and commodities. This disfigured the statistics of child conditions in factories and industries and led to several movements against the state to strictly demarcate age groups and their roles and positions in the industrial society.



understandings. It was considered as a form of maltreatment deserving the severest form of punishment. However, in such a case in which a racial identity was far more important than any other, the possibility of child protection was severely questionable. While on the one hand, German child protection policy under Nazi Germany opened a completely new vista in defining the norms against sexual exploitation of child, it clearly exhibited a rigid stance in opposition to the universal and generic perceptions towards children (May-Channel and Herzof 2003).

Ethical questions regarding adult-child sexual relations have deep historical, cultural and economic roots. The perceptions regarding child, childhood and child rights at different stages of history have adumbrated understandings that generate discourses about child rights. Childhood is seen as a period of dependence, innocence and psychological narrowness followed by a more autonomous phase of adulthood. This also correlates with biological conceptions regarding physical, mental and emotional necessities. It is considered that the child needs growth, mental development, emotional well-being and physical security. Sexual needs and requirements are a part of the adult realm and thus, protection from all forms of sexually exploitative measures, especially those bestowed by paedophiles, is a major cause of concern for the German state.

In above mentioned situation, the government faces a dilemma of prioritising norms. Norms of ethical behaviour can contradict each other, and Germany faces a problem of prioritisation of child rights over other claims. Germany makes absolute claims about child rights to protection, within its borders but not at the cost of envisioning paedophiles as ‘pervert’ or a ‘cause of threat and concern’. Contemporary forms of vigilance regarding paedophiles in Germany challenge the basic premise that paedophiles are sources of harm. The principles governing German anti-paedophile policies are deeply embedded with the belief that paedophiles are ‘victims’ of acute mental disorder and need a softer treatment, until and unless they have been caught by law and convicted of punishment.

This is rooted in thinking in Germany in the late nineteenth century, witnessed in the rise of a new type of concern in the discipline of psychiatry wherein German paedophiles were seen as a ‘perverted, sick-headed and ill-mannered people’ seeking to sexually engage with children to gratify their demands. As a part of a study initiated by Berlin University, attempts were made to inject psychiatric findings into legal mechanisms. This marked a shift from ‘danger’ to ‘disease’ wherein the older language

of crime and hatred towards paedophiles shifted to a pathological and clinical analysis of such behaviours. Thus, the act became dangerous but far before that, the actor became a bigger danger. In this regard, treating the bigger danger rather than focussing on the act is the guiding principle of Germany's concern regarding paedophiles. Policy directions focus on creating measures and ways that deal with paedophiles and their mind-sets. In this regard, the structure of oppression then becomes less important and curing the oppressor takes foremost importance. There are several loopholes in this approach which will be discussed in this chapter.

This section has attempted to give a brief sketch about ideas related to child and childhood in Germany and contemporary concerns regarding paedophiles. However, it is important to discuss the legal mechanisms, both domestic and international that have been adopted by Germany to govern adult-child sexual relations. The problem of sexual exploitation faced by children is not only monitored by the German state, but also through media campaigns and non-governmental organisations. A multi-faceted articulation of the problem is brought to light by looking at the ways in which sexual desires are governed in Germany. The notion of sexual abuse or exploitation of children tends to become complicated when placed within a certain cultural context. Culture emanates acceptability or non-acceptability towards a set of beliefs, customs, behaviour, practices and habits (Birchall 1989). The core values of a political community lay down the modes of interrelationship among its people.

### **Discourse on Paedophilia**

Traditionally, Greek love stressed on homosexual relationships and its adult-child version of expressions as part and parcel of human life. The entire German literature from the 1550s to the 1770s reflected expression of adult-child relationships based on Greek love (Griechische Liebe), Socratic love (Socratische Liebe) and Platonic love (Platonische Liebe), each reflecting a liberal orientation in sexual interaction (Kunzinar 1996). Gay movements traced their source from these writings and under Johann Winckelmann, the formation of gay literature began in the eighteenth century (Potts 2000). Yet, German authorities had strict restrictions on these liberal sexual expressions until the beginning of the romanticist movement in the 18<sup>th</sup> and 19<sup>th</sup> century in Germany (Susan 2002). Discourses around love re-drafted its earlier orientations and at the creation of a tolerant German society towards new forms of homosexual relationship evolved (Tobin 2000).

This new aesthetics wave influenced the revolutionaries including poets, sculptors, artists and painters in a unique manner. Several creative ways were explored to express the rising cult of relationship between males of the same sex (Sweet 1989). Commonly known as classical and neo-classical period in Germany, the eighteenth century produced a milieu of academic essays, poems and novels all set in the backdrop of Greek expressions of love (Wilson 1999).

By the nineteenth century, the term pederasty defined adult-child relations in Germany far more aptly than paedophilia. Pederasty is a term borrowed from the renaissance period of Florence. It is a specific sexual relationship between an adult male and a boy. This came in vogue in German discourses of homosexual relationships as well. Several great scholars and artists like Oscar Wilde became advocates of social acceptance of pederasty (Tobin 2000). Liberal youth movements like Wandervögel, initiated in 1901, proposed to expand discourses on romance and nature (De Mause 1974). The objective of this movement was to redefine the relationship between adult and child in a non-sexual way. The journal *Der Eigene* strongly proposed pederasty as a means to cure moral corpulence among German youth. However, this wave was suppressed by anti-pederast philosophies expressed in the writings of Friedrich Engels and Karl Marx. These philosophers took a strong stand against liberal ways of expressing love and disbelieving in natural forms of sexual interactions (Weller 2000).

Paedophilia as a recognisable perversion came from the famous German sexologist and psycho-therapist Krafft-Ebing in 1886. He postulated a critique of earlier existing religious and moral philosophies on adult-child sexual interactions and explained paedophilia as a mental disorder among people. This new approach gained momentum in Germany and pressurised the state to take up the matter as seriously as possible (Tobin 2000). Paedophilia as a disorder also cultivated an image that paedophiles were a source of threat and large sections of people marched on streets demanding a higher age of consent for consensual sexual acts. It was a widely held belief in the German Reich that children were at threat within these liberal discourses.

Within these emerging discourses on the forms of social interaction between an adult and a child, the role of the state gained profound importance. In this regard, the gatekeeper of morality, public as well as private, became the sole responsibility of the state, rather than the church. This was reflected in the state's attempt to modify its earlier draft of the Reich Criminal code of 1871 (Wilson 1999). In 1871, homosexuality

was criminalised under paragraph 175 of the criminal code. However, the biggest limitation of this new amendment was that it lay provisions that criminalised homosexual reference (Weller 2000). The exclusion of adult-child sexual interactions as punishable offence was a major loophole which was misused for paedophilic advantage. The nineteenth century is full of documented sexual abuse cases involving parents, teachers, priests and relatives using children as sources of sexual gratification in Germany (D'Emilio 1992).

The Nazi party under the control of different leaders had very strongly denounced all types of homosexual relationships in Germany. Heinrich Himmler, a leader of Nazi party in the early years, condemned adult-child relationships and stated that homosexuality was an attribute of the non-Aryan races (Bernecker 1975). However, several evidences and reports reveal homosexual tendencies among party workers. Himmler had a relaxed approach in punishing homosexual offenders as his orientation was rooted in the belief that heterosexuality would sustain the German civilisation through procreation (Tobin 2000; Kaylor 2006). He condemned homosexuality on grounds that if it became a way of life then it would lead to a high degree of imbalance in the population as Germany had already been losing a considerable number of men in wars. Under Hitler, homophobic and homosexual activities was condemned and severely penalised (Holmes 1980). The use of concentration camps to punish, beat and inflict atrocities was a common feature under Hitler's governance and rule (Longerich 2012). The account of number of deaths of homosexuals was very high in comparison to any other socially unacceptable groups other than Jews (Holmes 1980; Longerich 2012).

In the second half of the twentieth century, the homosexual movement gained momentum and expanded its earlier demands to accommodate more liberty within its fold (Woods 1998). Several article series, magazines, newspapers and public discussions were referring to sexual liberation as a necessity within German society. Sexuality and interpersonal relationship was a part of an individual's liberty and free choice (Singer 2009; Woods 1998). Thus, the period between the 1960s and the 1980s witnessed a surge in homosexual narratives in Germany (Katz 2001). A gamut of protests took place across Germany which focussed on topics related to sexuality. These groups demanded 'increased acceptance of monogamous relationships, homosexual

sexual liaisons, acceptance of public nudity, legislation of abortion, legalising pornography, etc. (Tobin 2000).

During 1971–2000, two schools of thought influenced Germany's stand towards children and their protection (Galm and Derr 2011). The first school of thought, including a majority of Germans, demanded a liberal stance towards interpersonal relations between adult and child with homosexual agendas (Kaylor 2006; Woods 1998). This was coupled with initiatives taken by politicians and party leaders who were also reworking their manifestos and agendas to make space for these liberal approaches. The Green Party openly discussed the issue of homosexuality and forms of love between adult and child along with its implications and authenticity. The second school of thought was led by the human rights and child rights advocacy groups. In the international arena, childhood and child rights discourse were being seriously debated and discussed. The 1989 convention on CRC was a major impediment to the first school of thought (UNCRC 1989). The German government, deeply committed to an anti-paedophile stance, took a strong initiative in curbing all forms of homosexual agendas that involved sexual access to children (NPA 2000).

Germany accepts that paedophiles are part of its society and are categorised as two distinct types: convicted paedophiles, those that have caused harm to children within society; and non-convicted paedophiles, those who have not been caught engaging in exploitative relations with children but who have the inclination to do so (Bancroft 1978). It has two major responses to acts of harm emanated by paedophiles living within its communities. First, convicted paedophiles are taken to task by strong legal actions and punitive actions (Beach 1977). Second, non-convicted paedophiles are considered as having mental abnormalities, opening avenues for treatment through several therapies, treatments and projects (Bowman 1952).

Today, the irony of the situation is that paedophiles are found in high numbers in Germany. Paedophilia is rampant in all parts of Germany especially those areas that share borders with East European countries like Romania, Czech Republic, Bulgaria, etc. A series of like-minded authors, artists and supporters have made attempts to validate concerns of paedophiles in the twenty-first century. Green Party politicians have a history of advocating rights of paedophiles and agendas for lowering the age of consent norms (Melrose 2012: 78). Agitations have taken place at university levels which suggest that narratives such as paedophilia as moral panic and notions of harm

associated with it are over-exaggerated ideas. Levine (2002) went a step further to suggest that children require positive sexual experiences which are provided to them by paedophiles. Paedophiles in Germany use rational narratives to legitimise their claims, stating that paedophilia is natural and a scientific mechanism for sex-education of children. In 2004, the same sex adoption bill for homosexual couples was passed. This move was disregarded by child rights groups and several NGOs as it would make paedophilic relationships thrive within familial ties and relationships.

In the very next year, the Dunkelfeld project<sup>6</sup> was launched as an initiative of Berlin University and the private organisation until 2008, when German government became a part of it. Under this project, paedophiles are treated as victims and not as offenders. In 2005, as Germany was facing rising abuses of children and increasing actions of paedophiles within its borders, the launch of project Dunkelfeld was seen as an effective mechanism to deal with these problems. In 2008, along with the Government, several university professors, research institute heads, and psychologists pledged to deal with paedophiles. With this spirit of dealing with paedophiles, Germany became one of the first countries to adopt a sensitive victim-based approach towards paedophiles as against the offender-based perceptions prevalent in the international system (Don't Offend 2014).

The Dunkelfeld project in Germany was a step to move closer to the paedophiles and based on the idea that offences against children are not a matter of choice but because paedophiles are wired that way. Paedophiles do not necessarily engage in sexual intercourse with a child but fantasise about deviant ways of interacting with a child. The program was selective in dealing with its participants and is open to paedophiles 'who have not committed criminal offence', 'have committed but not identified by law', and 'convicted paedophiles' (*Der Spiegel* 2001). The treatment is strictly for paedophiles who voluntarily wish to use therapy as a way to deal with it. However, many a times these necessary requirements seek to further advance paedophilic tendencies.

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<sup>6</sup> Project Dunkelfeld is an innovative support service programme for paedophiles in Germany to curb and control their desire to have sexual alliances with children. It is a prevention programme which began in Berlin in 2005 (through corporate funding till 2008 thereafter supported by German government) and is based on the vision of providing 'help' to avoid becoming an 'offender'. It states that a paedophile should not be guilty of his/her sexual desires but be responsible for his/her acts. Thus, it is a confidential medical treatment programme is available for paedophiles likely to engage in sex with children.

The Dunkelfeld project also recognised that ‘Don’t Offend’ has been successful in Germany as it pledges for ensuring legal confidentiality of all its volunteer patients. Germany clearly accepts the existence of paedophilia within its borders. Several countries, on the other hand, completely negate or overlook the existence of paedophilia in their society. In order to uphold the principles of child rights, Germany adopted this approach in the twenty-first century. The objectives of the project assured reduction in sexual abuse cases of children by adopting ‘empathy towards the situation of individuals’, ensuring that ‘no criminal repercussion would follow’ provided the victim declared himself/herself paedophile voluntarily, ‘no discrimination regarding sexual preferences’ and ‘assurance of confidentiality’.

In the period from 1949 to 2017, paedophilia as a shunned and isolated activity has been suppressed at times and allowed open expression at other times in Germany. In 1989, Germany construed a political image that represented a pro-child inclination with the adoption of the CRC. It had pledged a deep commitment to removing paedophilia from within its society. This approach was deeply rooted in the human and child rights discourses taking place at the international level and child protection from paedophiles was postulated rhetorically. However, this pledge to protect children from paedophiles was counterbalanced by new victim-based understandings of paedophilia. On the one hand, Germany was making deep level commitments to uphold its stand against paedophiles but on the other, it was simultaneously betraying them. By 2008, the earlier high ideals and beliefs held by the state culminated in a pro-victim-based approach in which paedophiles began to be perceived as people with serious mental disorder.

It has been argued that the main dilemma of the approach adopted by Germany in dealing with paedophilia is its consideration of prevention as a viable source of containing negative consequences of paedophilia. Norms of prevention can constrain an individual’s behaviour for a particular period. However, a paedophile can re-adopt his/her earlier behaviour when consistently exposed to surroundings that have easy access to children (*Der Spiegel* 2001). As Klaus Bier has claimed, paedophilia cannot be completely removed but it can be managed or reduced. The possibility of its recurrence is not completely denied and when in a situation of dilemma, prioritisation of child protection, solidarity, and ethics could fail in the face of individual sexual drives (Beier et. al. 2009). While Germany makes no absolute claims in a paedophiles’ intention of choosing a priority over the other, nonetheless in real life, paedophiles tend

to make choices that are completely opposite to the above claims. In 2002, a convicted paedophile, who had undergone treatment under the Dunkelfeld Project, expressed his desire to move out from Germany to Thailand in order to be able to have continued and unrestrained access to a child (David 2000). There are several such revealing instances of the absolutely divergent trajectories of Dunkelfeld Project's implications on German paedophiles (Vogel 2004).

Looking at the history of paedophilia and the current approach in dealing with paedophiles, the present study postulates some common attributes about governance of paedophilia in Germany. The German governance structure borrows partially from different disciplines like sociology, biology and psychology in explaining existence and prevalence of paedophilia within its society (Blanchard 2010: 75). The treatment method followed by Germany stems from its multidisciplinary approach in understanding paedophiles. The recidivism which is prevalent among paedophiles in all societies is dealt as a disease and disorder in Germany (Die Welt 2002). Even though it is a less accepted way in dealing with abusers, it has positive as well as negative outcomes on child sexual abuse in Germany. Nonetheless, paedophiles have a tendency to fall back to their earlier modes of engagement with children and hence paedophilia should continue to be treated as a threat to children (Card 1981:179). However, when German paedophiles ill-treat children internationally, this approach falls flat. Thus, governance of paedophilia should encapsulate concerns which help in protection of children internationally as treatment alone will not be able to mitigate the harm paedophiles cause in countries with relaxed norms for child protection.

### **Child Rights: A Domestic Legal Framework**

Germany's legal framework defines sexual abuse of a child as 'any action performed by adults on children actively or passively for their own sexual satisfaction' (Section 183 CCFRG). Sexualised relations between adults and children below 14 years of age is a criminal offence. This definition has unified standards of application all across Germany notwithstanding prejudices based on gender, class and race. The successful impact of legislation on practice is clearly reflected in the case of Germany. The legislative body works in close association with activist groups which decreases exposure of children to vulnerable situations. These initiatives are clubbed with training workshops for building awareness. Thus, Germany creates an inclusionary model



which comprises of the state, family, school and other such related institutions to deal with the problems faced by children at the hands of sex exploiters.

In Germany, child sexual abuse has been defined as any action performed by an adult on children. This sexualised relationship is based on the logic of dependence in which an adult consciously and mindfully approaches a child in order to have an active or passive engagement to seek sexual gratification. It is an integrated part of Germany's criminal code and prohibits all forms of sexual abuse and exploitation of its children. German criminal code mainly and specifically interprets sexual abuse at the virtual community as 'possession, distribution and acquisition of child pornography' and designates it as a criminal offence (Qualy and Palmer 2008). Child endangerment is anchored in law (Davidson and Gottschalk 2011) as a rule rather than a specified legal term. This led to an interpretation by German civil court that danger is the crucial yardstick to account for presence of child endangerment. In such a scenario, presence of danger and the potential harm that can be caused by danger become two causative factors in dealing with rights of child.

Germany clearly acknowledges the harm that paedophile networks operating within the tripartite framework of child prostitution and child sex tourism, child trafficking and child pornography have on children (Berkman 1996). It has designed an effective structure in dealing with this problem. The family is the first and foremost unit that provides safety and protection to the child. The German state is the next institution that constantly reworks standards for child protection norms. Ministries such as the Federal Ministry of Justice and the Federal Ministry of Family Affairs, Senior Citizens, Women, and Youth work in collaboration with the police (who are directly responsible to Child and Youth Welfare Authority) and other agencies in protecting children and mitigating paedophiles (Galm and Derr 2011: 26). Close cooperation between family courts and Jugendamts (German Youth Office) and other institutions also ensure an effective approach towards protecting children. Non-state actors and NGOs share ground level information about the condition of children (Bellamy 2002). Thus, the state aims at the creation of a 'responsible community' constantly in a discursive engagement on issues that affect children. This community, comprising of several stakeholders, expands child rights discourses, help in ensuring an inter-disciplinary engagement on paedophilia and its recurring impact on children, spreads awareness about negative consequences of adult-child sexual relations, and act as a forum for

sharing experiences on cases (Bernecker 1975). Several counselling forums run by the German Association for the Protection of Children are also an integral part of this 'responsible community.' German ministries together with commercial sponsors have set up national and regional telephone helplines for children to act as forums of redressal, counselling agencies and a point of contact in case of social emergency concerning abuse and violence against children (Bilenskv 2006: 890).

There are several other institutions that are based on human rights principles and work for child rights. Independent commissions and bodies carry out regular reporting of children's situation such as Children's Commissioners at the state level and the Children's Commission of the German Bundestag (Cossar et al. 2011: 77). However, there is an absence of a centrally controlled independent institutional mechanism that receives complaints, provides redressal and comprehensively monitors the problems faced by children at the hands of paedophiles. UN committees, in consonance with the Paris Principles, have suggested the 'the establishment of an independent national human rights institution, in accordance with the Principles relating to the status of national institutions for the promotion and protection of human rights' (Bellamy 2002: 96). These bodies are created so that that institutions are able to coordinate actions plans at centre and state level and ensure a proper redressal of threats to children (Currie 1994: 65).

The German legislative framework deals with sexual exploitation of children by envisioning two alternative recourses: criminal provisions and affirmative action. This kind of approach is employed to ensure an overall coverage of different sectors that have a bearing on, and in turn influence, the problems faced by children (Bellamy 2002: 33). By assuring non-criminal provisions (affirmative action), the German state seeks to provide basic entitlements and benefits to children. By ensuring an uninterrupted access to health care, shelter, social services and other assistance, the state seeks to create a protected environment around children. Child protection and the rights of children are ensured by legally sanctioned, non-criminal measures which are contained in the Youth and Child Service Act, Civil Code of Germany and Act Concerning the Protection of Young People in the Public (Bohlander 2008: 118). The criminal provisions are provided in the PCFRG and Criminal Code of Germany (CCFRG) which deal with paedophiles and other child offenders.

*The Penal and Criminal Code of Germany*

The PCFRG is a two-pronged approach and deals with both paedophiles who are adult and support or engage in sex with a child and offenders who are between 14-18 years of age who motivate, create conditions and pull or influence younger children in a situation of harm. In both these cases, the characteristic of PCFRG is re-assimilating or re-integrating. Germany deals with criminals very strictly but once the conviction is over it seeks to assimilate the offender within a normal societal life. A wide range of punishments have been incorporated in the list of offences that paedophiles commit towards children. The penal code deals with different types of harms that is done to a child which include physical abuse, sexual abuse, incest, paedophilia, marriage, and child neglect (Thompson-Cooper 2001).

<b>Table 3.1: Punishments provided for Child Sex Abuse, Child Neglect and Physical Abuse in Germany</b>		
Child Sexual Abuse		
<b>Section</b>	<b>Nature</b>	<b>Punishment</b>
§ 176	sexual child abuse - sexual actions with child under 14 years actively or passively/showing of pornography	6 months up to 10 years sentence, in case of less importance up to 5 years sentence or fine
§ 176a (1)	grievous sexual child abuse e.g. with penetration or performed sexual intercourse/joint action	1 year up to 10 years sentence
§ 176 a (2)	sexual abuse for production of pornography	2 years up to 10 years sentence
§ 176a (3)	sexual abuse connected with grievous physical maltreatment/endangering of life	not less than 5 years of sentence
§ 176b	sexual child abuse resulting in death	Life imprisonment or sentence not less than 10 years
§ 174	sexual actions with persons under 16 years standing in relation of upbringing education or training /between 16 & 18 years by abusing the dependence	up to 5 years sentence or fine
§ 182 (1)	sexual abuse of young persons carried out by a person over 18 at person under 16 by taking advantage of predicament	up to 5 years sentence or fine
§ 182 (2)	sexual abuse of young persons carried out by a person over 21 at person under 16 by taking advantage of lack of sexual self determination	up to 3 years sentence or fine
§ 177 (1)	sexual intimidation/coercion or rape by threatening or asking advantage of defencelessness	1 year up to 10 years sentence
§ 184 (3)	supply, display, purchase, and production of pornography with children	3 months up to 5 years sentence
§ 184 (4)	commercial supply, display, purchase, and production of pornography with children	6 months up to 10 years sentence
§ 185 (5)	possession and passing on of pornography with children	up to 1-year sentence or fine

Section	Nature	Punishment
Child Neglect		
§ 171	violation of obligation of care and upbringing – risk of serious physical or psychological developmental disturbance of persons under 16 years	up to 3 years sentence or fine
Physical Abuse		
§ 223	physical misuse or damaging of health of another person	up to 5 years sentence or fine
§224	dangerous bodily harm (e.g. with poison or weapon)	6 months - 5 years sentence in case of less importance from 3 months up
§ 225	misuse of persons standing in care of somebody/ brutish misuse of ill/infirm person under 18 years	3 months up to 5 years sentence
§ 226	grievous bodily harm - enduring damaging of health/ handicap of the victim	1 year up to 10 years sentence
§ 227	bodily harm resulting in death	3 years up to 10 years sentence in case of less importance 1 year up to 10 years sentence

Source: [www.gesetze-im-internet.de](http://www.gesetze-im-internet.de)

PCFRG criminalises incest and regards it as a crime punishable by severe punishments. Prostitution is also regarded as a crime under German law subject to the condition that the person who is involved in prostitution exploits another person for generate profit or manage such acts to involve others in prostitutions, provide a place or other requirements (Goodman et al. 2003).

Article 184(b) of PCFRG also criminalises varied aspects of child pornography (for e.g., distribution, acquisition, and possession of material of child pornography). It clearly states that procurement, distribution, display and supply of child porn material and facilitation of such material to member/members of the society in printed or online forums is punishable by law. Moving a step further, the penal provisions also criminalises depiction of sexual content or creation of adult pornographic content in the presence of children. Thus, both depiction and involvement were brought into and continue to influence within the ambit of legal scrutiny.

Section 232 (1) and (3) of the PCFRG also enlists the forms of punishment liable upon child traffickers. It reinstates the ‘helpless’ criterion in determining the unlawfulness of the crime committed. The punishment for such a person who engages in child trafficking ‘shall be punished with imprisonment from six months to ten years’. In cases where the child is himself/herself a perpetrator, ‘the imprisonment ranges from one year to ten years’ (Alsi 2010: 98). Section 233a (1) and (2) primarily regulates the mode of

transfer opted for child trafficking from a foreign country within Germany. Under this provision, the trafficker using different modes and ways of trafficking a child ‘shall be punished with imprisonment from three months to five years’. In case the trafficker is below 18 years of age the ‘imprisonment ranges from six months to ten years’ (Currie 1994: 86). The Council Framework Decision questioned the rationality of imposing fines as a way of compensating for the heinous crime inflicted by a perpetrator over a child. In lieu of the above directive, the German Criminal Act has not implemented a major change in its earlier stand.

Section 236 was incorporated in the PCFRG in 2004 which extended the purview of application of sex trafficking laws. The earlier existing laws were focused on human trafficking and it was with the addition of Section 235 that the intentions of Germany to protect trafficked children was established (Currie 1994). A new vista was opened within which ‘unhindered physical and emotional development of children and juveniles’ was also guaranteed. In this regard, ‘sexual exploitation’ and use of children for ‘physical gratification or any other unlawful sexual engagement’ was considered a punishable offence (Asli 2011: 76).

The issue of forced marriage has not been explicitly dealt with in PCFRG; because German law strongly protects children from underage marriage. Also, this issue is not critical in Germany, and in rare cases of child divorce, these children receive financial and social support that reduces the chance of re-victimisation (Lamb and Edgar 1994: 61).

Child sexual abuse and the rules that oblige the perpetrators are listed in the CCFRG. It is a standing reference to all judicial proceedings in the court. The punitive action and the range of punishments for breach of law towards children is enlisted in the PCFRG. These laws that hold paedophiles liable in court of law have been amended time and again to accommodate the changing face of crime against children. The essential principle that is a referring guideline to Germany in all criminal cases against children is the UNCRC which was ratified in 1992. It acts as a supranational law in Germany and Article 19 of UNCRC has been the underlying factor in state schema of planning.

A major limitation in the action plan made by German government within the Criminal Code is the age of criminality. In ensuing the protection of children from violent sexual

indecencies and exploitation by paedophiles, the state considers age as a very important factor. Consensual sex above 14 is not a criminal act and this becomes an enabling factor for paedophiles who use consent as an easy escape from any offence that he/she commits on a child. The legal dimension for protecting children of Germany has been construed by considering all forms of potential threats. Germany is wedded to exceptionalism as compared to the rest of the world by providing a standard for protection in Section 174-184c against child prostitution. Section 174 is against any person 'who forces a child for engaging in sexual acts' as it severely attacks the identity of child and both the identity and self is important elements in growth years. The penalty for committing such an offence is five years of rigorous imprisonment. Section 176 is the basic and most important provision that makes 'the commission of sexual acts on persons below the age of fourteen punishable with imprisonment of up to ten years, and the same punishment applies to inducing a child to commit sexual acts with a third person'. This provision reflects what Germany speaks to and about people who seek to intervene in the personal space of children and impinge their personality (IOM 2001). In continuation, acts of 'penetration' committed in groups or by repeated offenders is subject to one year of imprisonment. Germany's commitment to action against offenders is portrayed in Section 182 of CCFRG, which penalises acts of sexual abuse with minors 'through the exploitation of coercive situation' (ILO 2005: 78). The maximum term for imprisonment is up to 15 years depending on the nature of crime committed. Thus, the relationship between coercion and sexual exploitation has been considered in ensuring allegiance to laws.

A study on the outcomes of criminal investigation of trafficking cases shows that in Germany, in a substantial proportion of cases, victims of trafficking are formally charged with entering the country illegally or other immigration law violations (Pfeiffer et al. 1998). Serious conflicts between immigration authorities and law enforcement agencies on the toleration policies can be observed on the issue of allowing witness victims to stay legally beyond the time it takes to successfully prosecute a case (Williamson 1998). Moreover, the Federal government has tried, in collaboration with the tourist industry, international organisations, and non-governmental organisations to highlight sexual exploitation of children in tourism and to promote countermeasures required to prevent such exploitation (Robert 2010: 92).

### *The Civil Code of Germany*

Germany, as a developed country, has added to its criminal provisions a number of non-criminal preventive measures to reduce child abuse (May-Chahal and Herzog 2003). Here, the Social Code is an important legislation outlining the mechanism of child and youth welfare system and assistance services provided to the children and parents in cases of child abuse, not particularly described by the SGB VII. The Child Protection Act of the States is another protective law. In legislation related to child protection, states have drawn on the Federal law to regulate compulsory medical examinations for infants, establish child protection networks at local levels, and ensure the rights of the child in cases with higher levels of risk.

According to Germany's Basic Law, children have been guaranteed several rights and welfare services. The basic entitlements of children include protection, survival, sustenance and development. Child protection involves the right of a child to be protected against direct violence, whether sexual or asexual. Germany has also formulated several welfare services as a part of its policy initiatives. The testimony to all the welfare activities is contained in a 'Social Code, Book VIII – Child and Youth Services' (SGB VIII). The main task of Child and Youth services is to reduce all forms of disadvantage in an individual's growth and development phases. It also includes parents as beneficiaries of entitlements related to providing support systems. In this regard, it seeks to create a positive and friendly environment in all places of interaction between children and adults. Germany uses public-private partnership agencies and mechanisms to provide all benefits to its children. The Child and Youth Welfare Authorities work along with several NGOs and local agencies in providing children entitlements such as education, basic pedagogic help, psychological assistance, medical care, child protection centres and access to leisure time activities.

Children, of all categories, have been protected in Germany and entitled to basic rights and necessities. Whether they are disabled children or street children, all of them are entitled to above-mentioned rights and claims (ECPAT 2010). A very small section of street children is found in the sub-urban pockets of Germany. In reality, only about 20,000 children live on streets in Germany (Rober 2010). Social welfare and other benefits have led to a reduction in poverty which in turn has reduced problems of sexual

abuse and exploitation among German children. Thus, children and their rights to basic necessities have been heavily protected in Germany.

The provisions that elaborate the mode of operation of children's welfare services were earlier defined by the Youth Welfare Act (JWG), 1990 until replaced by the Child and Youth Service Act (Kinder und Jugendhilfegesetz) in 1992. There were two main reasons that prompted Germany to opt for this replacement. First, the Youth Welfare Act was born out of the Youth Welfare Act of the Third Reich that existed from 1922 to 1945, which has little contemporary relevance (Borhani 2013). Secondly, the JWG 1990 aimed merely at security and regulatory policy. Thus, this replacement was made to ensure an increased role of parents and a minimalist role of the state in providing protection to children. This in turn led to some cases of sexual abuse among children by known people (May-Channel and Herzof 2003). Consequently, the Child and Youth Services Act is also used in conditions where intervention of legal authorities seems to be mandatory (Currie 1994).

The Child and Youth Service Act broadened the restrictive and regulatory policy of 1990 to include public as well as private players as agents of child welfare and protection. It dealt with the notion that the state, family or other agencies need to be the promoters of child rights and child protection. This new paradigm espoused that children should be given services and opportunities like education, health care and social service entitlements which reduces external interventions by agencies. It gives the children, 'right of wish and choice' (*Wunsch und Wahlrecht*) (Galm and Derr 2011) and ensured 'provision of shelter and protection of children and young persons' (BKA 2011). Thus, the authoritarian interventions by state are replaced by informal assistances by family. The state becomes a facilitator of benefits and not a protector of outcomes. With regard to child sexual abuse, this act puts an onus on the Youth Welfare Service (Jugendhilfe) and the State Youth Welfare Office (Jugendamt) to support and protect the child (BMFSJ 2007).

Title 8 of the SGB is the basis of social service provisions for children. It 'grants every young person the right to obtain assistance for his or her development and the right to an education that makes the young person a responsible member of the community'. This is coupled with provisions that entitle several 'forms of assistance' to children, parents and adults up to the age of twenty-one (Currie 2004). The idea of including families as beneficiaries of the scheme is rooted in the belief that 'the parents are



primarily entitled to and responsible for raising their children' (Currie 2004: 81). An interlinked concept to this social code is the idea of 'just distribution' and creation of an 'egalitarian society'. It juxtaposes the deplorable backgrounds of children with the circumstances that lead to poverty and lack of inclusiveness in the society. The existence of such a situation is considered as the root cause of sexual abuse and exploitation. The German state considers social assistance as the first step in ensuring protection of children from dangerous influences.

The Civil Code is a standing testimony to parental claims and also of the obligations they have towards their children. The Civil Code is above all forms of penal implications and stands as a constant reminder for the society to conform to the objectives of law. The loci of building a protective mechanism around children is by ensuring unbridled right to education. This education should be free from any forms of fear, physical torture, mental aberrations and other violent deterring forces. According to the Civil Code, education should be coupled with health care provisions which becomes the second stepping stone to a child-friendly German society. An amendment alone will not help to dissolve patterns of violent behaviour in education. The nationwide campaign 'More Respect for Children', an initiative by the BMFSJF, provides access to several welfare services to children. This campaign envisions a pro-sensitive society (comprising officials, civilian partners and other national and regional disseminators) where children would not be objectified for sexual gratification but protected from exploiters and sex perpetrators.

On the one hand, the state ensures a framework for ensuring a just society for children and on the other, it creates provisions to reduce exposure of children to several forms of dangers. The Act Concerning the Protection of Young People in the Public is an attempt made by Germany to target the exposure points that make children vulnerable to further threats. It is presumed by police officers that exposure of children by posting children's photos on social media, regular travel to pubs and night clubs, becoming a repeated buyer of risky media including video, compact disc and any other displaying material which expose children to paedophiles are potential exposure points. This law is based on the basic principle of avoiding risks in all potentially endangering process and therefore, is a far more pragmatic strategy compared to taking action once children become targets of paedophiles.

Germany has also made laws under the Federal Youth Protection Act that prevents children from becoming easy prey to paedophiles. There is a strict monitoring of children's exposure to potential addictions like alcohol, tobacco and drugs. Night clubs, bars and other such places are explored by paedophiles. By ensuring curbed exposure to these places, the state aims at protecting children from becoming easy targets of paedophiles. As per law, children 'below the age of sixteen may not purchase tobacco and alcohol' until and unless they are 14 years of age. Children above 14 till 18 cannot go to drinking places, pubs and other areas without an adult accompanying them.

Social assistance includes programs like counselling, medical assistance, awareness programs and financial investments. It also aims at providing subsidies and financial benefits and entitlements. The institutional structure that is primarily involved is the youth offices of municipalities and states. In this regard, several public-private partnerships have been encouraged for eg. Don't offend project which assist and help in the spread of these social benefits among its people. Currently, Germany is considering two major lapses in providing social welfare services to its children (Albrecht 2012). First, federal law is applicable in all of Germany including Länders but since 2006 state legislative power overrides the federal government's role in enacting laws for child protection. This has become an ego issue as state power assumes far more importance than that of federal government (BMFSJ 2012). Secondly, considering the potential development of social service communities, it imposes burdensome mandates on local communities and states. Thus, a clarion call for replacement of free entitlements has been envisaged which would leave vulnerable children in dangerous conditions (Bernecker 1975).

Germany has bestowed upon its children, especially those belonging to low and middle-income categories, mandatory universal health care systems (EU 2011). A number of human rights organisations like ECPAT Germany and Kok-Gegen-Menschenhandel (KOK) consider this move as a novel step in ensuring a mechanism of safety for German children. The history of such a humanitarian approach dates back to the nineteenth century rooted in the history of exclusion of children coming from weak backgrounds.

Such approaches came under scrutiny portraying a negative image of German state and it ignited a benevolent attitude towards children (EU 2011). Under the health care system which comprises of the social health care system and private contractual health

care (McGee et al. 2005), family coverage to health benefits have been granted by the state (ECPAT 2010). Not surprisingly then (McGee et al. 2010), Germany seeks to provide a healthy and protected environment for its children so that other related problems can be dealt with. Exemplified in its benefits, the social health care system includes ‘natal care, rehabilitation and nursing care’ (Finkelhor 2007).

From its early years, Germany has put stress, particularly for its children, on formal education as a means of political, economic and social equality (Pereda et al. 2009). It considers that the pre-requisite for ensuring any rights or entitlements should be based on access to free and compulsory education. The 2006 constitutional amendment cemented the role of states as foremost in ensuring common access to educational institutions for children (Priebe and Svedin 2009). The government makes sure that subsidies are provided to children in school, colleges and universities. The consciousness that drives the state to focus on education is influenced by fact that education builds awareness. Its works like an emancipation through self-improvement mechanism. Education builds dignity and a capacity to protect the self through reasoned and informed rationales. The child through education, both formal and informal, is able to assert his/her identity through reasoned choices and claim for civil and political space at a later stage in life (Radford et al. 2010).

Expanding the ambit and scope of education, Germany stresses on providing education to special children through special schools. Since 1994, however, the awareness has been growing that this form of special schooling discriminates against the disabled, and efforts have since been underway to integrate special education into the regular school system (Runyan et al. 2005). Thus, the constitution deliberately takes steps to ensure prohibition of discrimination of the disabled in any form whatsoever.

In recent years, the Federal Government of Germany has developed several national action plans and programmes on child protection. The federal action program ‘Early Prevention and Intervention for Parents and Children and Social Early Warning Systems’ has the purpose to deter child abuse (Pardek 1989). Further, for the protection of children and young people from sexual violence and exploitation Federal Government has also come up with ‘Plan of Action of the Federal Government’ (NPA 2010).

### *Laws relating to Child Pornography*

The recurrent problem of sexual exploitation in Germany has seen an unsurmountable surge in cybercrimes and the use of pornographic materials. The first attempts made by Germany in curbing the problem of cybercrime was as early as 2001. Germany ratified the Council of Europe's Convention on Cybercrime which reiterated Germany's firm stand in dealing with child pornography. Since then, Germany has committed itself in restricting access to child pornographic materials and interrelated crimes (Aheally 2004). Additionally, several policing mechanisms have been deployed to monitor, look into and arraign child sexual abusers using online mechanisms to establish contact with children. Non-state actors have also played a crucial role in curbing this problem by employing hotlines for immediate report and redressal. Child Line Germany runs a 24-hour reach out national helpline number to deal with child sexual abuse cases taking place in person or otherwise. In the history of the European legislations, Germany became the first country to provide a regulatory mechanism for Internet Service Providers (ISP).

Germany is a signatory to the CoE Convention on Cybercrime since 2001 and the federal government has played a significant role in its implementation (Hussey et al. 2005). As per the convention, the federal government has scrutinised its virtual communication channels and implemented several safeguards by dealing with the earlier existing loopholes (Qualy and Palmer 2008). Germany is making several attempts to harmonise the provisions of the convention with domestic laws in order to make it effective and increasingly successful (Jones and Kopiec 2001).

Germany ratifies and considers several international and regional instruments in curbing sexual exploitation of children in virtual environment (Hilton and Carr 2011: 65). The PCFRG borrows several definitions of terms that are subject to punishment, have criminal bearing, and involves a wide range of perpetrators from the Protocol to Prevent, Suppress and Punish Trafficking against Persons, Especially Women and Children. This was done by replacing the provisions of the UN Convention against Transnational Organised Crime. Since the 1990s, the core regional instruments that have been incorporated to strengthen child protection in crimes happening through the cyber world is the CoE Convention on Cybercrime. The core of all domestic laws in Germany has been provided via the guidelines and codes of conduct mentioned in the

convention (Gottschalk 2011). Additionally, to further strengthen its commitment to protection of children in context of virtual crimes, Germany signed the CoE Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse which made a mandatory provision for all member states to adopt creative and unconventional ways to curb the problem of sexual exploitation of children in online communities. In furthering the Council of Europe's Convention, Germany reiterated its firm stand against child exploitative mechanisms at several forums across the world. Whether it was appreciating the UNs and its related bodies and various regional entities or representing itself at all the three World Congresses against sexual exploitation of children, Germany reaffirmed that it has pledged to uphold the child-rights based goal of protecting children from all forms of encroachment by sexual abusers (Asli 2011).

The administrative functions of the state in dealing with cybercrimes became successful because it combined international, regional and national initiatives. Even though the CCFRG and PCFRG are invariably the two core determining factors of Germany's approach to cybercriminals, several other extra-legislative provisions also deal with it. The CCFRG clearly provides a strong legal command in dealing with child and juvenile pornography and makes a distinction about the same. In the case of the abused, both child and juvenile, the implied legal reference is stipulated and dealt within the definition of pornography given in CCFRG. Pornography has been defined to include written or visual material, like 'audio and visual recording media, data storage media, illustrations and other depictions pursuant to Section 11 of CCFRG'. The main aim of the provision is to charge paedophiles for sexual gratification and promoting sexual exploitation with children at virtual level as it results in a negative impact on the growth and development of a child.

Child and juvenile pornography is regulated under Section 184 of the CCFRG. Originally, all types of written material having pornographic content in relation to sexual abuse of children (O'Donohue and Geer 2014) or juvenile have been covered within the definition of child or juvenile pornography and is considered as an offence punishable under law. The Criminal Code criminalises, 'distribution, acquisition and possession of child and juvenile pornography'. Section 184b of the Criminal Code provides for an imprisonment of 3 months to 5 years in case someone 'disseminates child pornography; publicly displays child pornography, presents child pornography, or otherwise makes child pornography accessible; produces, obtains, supplies, stocks,

offers, announces, commends, or undertakes to import or export in order to use child pornographic materials or copies made from them or facilitates such use by another pornographic written materials related to sexual activities performed by, on or in the presence of children'. In continuation to the above legal provision, Section 184c provides protection to children above the age of 14 (even though consensual sex is legal) till 18 years in case an adult engages in activities mentioned in Section 184b.

As early as 1997, two laws addressing liability of ISPs were passed namely, the Media Services State Treaty (MDSTV) and the Federal Teleservices Act (TDG). Both these statutes were identical in nature and were revised in 2001 when the Directive on Electronic Commerce was provided stating a further increase in ISP liability as use of pornographic content was constantly increasing (MDSTV 1997). As a final step of regulation, under the German Telemedia Act 2007 (TMG), the TDG was transposed to TMG to ensure a greater 'liability for child sexual abuse content' in Germany. This liability is dependent on the role that ISPs play in the society who blocked all child pornographic content in order to combat the given danger. Thus, inaccessibility was seen as the best way to deal with the problem (TDG 1997).

The only bodies that regulate pornographic content are the two levels of police, i.e., the Bundeskriminalamt (BKA), or Federal Criminal Police Office and the State Criminal Police Office or Landeskriminalamt (LKA). In both cases, action is initiated only when presence of obscene content is reported to the police offices. Additionally, eco - Verband der Internetwirtschaft e.V., or Association of the Internet Industry (eco), Freiwillige Selbstkontrolle Multimedia-Diensteanbieter (FSM e.V.), or German Association for Voluntary Self-Regulation of Digital Media service providers (FSM) and Jugendschutz are the three Germany-based organisations running hotlines that provide channels for Germans to report (Hilton and Carr 2011). The reporting mechanism involves several steps of scrutiny, reporting, assessing and finally action is taken. Existing loopholes help paedophiles to take advantage of these regulatory bodies by hiding content since reporting is mandatory for initiating any action.

Regional integrity in combatting sexual offences in online communities got expanded with recent claims made by the EU to increase 'collective action in combating the sexual content on internet and use of children for production of pornographic material'. In 2011, Germany realised that its national legislations do not cover all related issues of child sexual exploitation in relation to child pornography. Accordingly, the Directive

of the European Parliament and of the Council on combating the sexual abuse and sexual exploitation of children and child pornography was ratified by Germany and actions like 'grooming, online pornographic performances and viewing child pornography' attract high degree of punishment. This initiative has been followed by an expansion of Germany's budget invested for protection of children in online environment. As against earlier times, the number of children protected under this directive has outnumbered all records in 2016.

Social networking sites have also been issued several directives by Germany to ensure that age of the joining, type of content being circulated and the quality of membership should be in consonance with the norms of protection. In standardising these principles, Germany has not attempted at constraining the rights of children; on the contrary, it has attempted to ensure protection in cases where violation of child rights to protection is possible.

Despite several attempts to curb circulation of child pornographic content, Germany has not been able to effectively deal with this problem. Paedophiles continue to enjoy access to pornographic content sold by illegal procurers and distributors of child pornographic material in Germany. Even voluntary codes of conduct that have provided direction for reporting content to German citizens involve a set of complex procedures. The advancing technology brings with it both positive as well as negative consequences. On the one hand, it has compressed time-space dimensions while on the other, it has made social crimes against children more rampant. It is very easy for paedophiles to procure content that has obscene material and ensure access to sexual gratification. The content is purposely titled in such a manner that it attracts paedophiles and sex offenders to watch it over and again. The online child pornography is a market by itself which sustains itself by targeting and ensuring consistent use of obscene material. However, under all circumstances, state should target at reducing the proliferation of these materials as it has a sustained impact on a child's overall well-being and identity. Finally, the 'self-regulation' mechanism particularly targeting potential content users is voluntary in nature and may or may not act as an effective method of controlling circulation of content.

## **Legal Provisions and Practices: Impact and Limitations**

Having discussed this, let us briefly analyse the positive and negative implication of these provisions and their bearing on mitigating the problem of sexual abuse. Though the statistical data show alarming numbers of child sexual abuse cases in Germany, the German domestic legal framework is not just a toothless enactment. It has several positive implications for the situation of children which are as follows:

- a) *On time reporting*: Due to Section 176, report of sexually abused cases no more remains a time-consuming task. It is reported, dealt and heard in time and strict punitive measures are imposed in cases where crime has been reported.
- b) *Decrease in number*: The presence of an easily approachable legal mechanism has resulted in an overall decrease in number of sexual abuse cases. Statistical analysis of last 5 years shows a decrease of 5% in number of registered cases implying a decrease in cases of sexual abuse and exploitation (May-Chahal and Herzog 2003).
- c) *Undeniable commitment to child safety*: The federal government has prioritised the issue of child safety way above all other issues. Several action plans and national policies have been drafted by the government to combat sexual exploitation of children.
- d) *Secrecy and child privacy is ensured*: In Germany, care is taken to ensure anonymity of children/victim of sexual exploitation. It is a clear mandate for all public prosecutors and all other persons (including media) to uphold the interest of children who otherwise face difficult situations during the trial of their cases.

No matter how divergent the legal framework of Germany is, there are several limitations within it. These restraints have far reaching consequences on children especially those who are living in sub-standard conditions and children of the immigrants who are illegally brought into Germany. Nevertheless, no matter how just Germany seems to be, its positive image falls flat when one looks at the failure of laws in protecting children of disadvantaged sections, low-socio economic backgrounds,



children of immigrants and those trafficked for the purpose of sexual exploitation (UNHRC 2006).

Some of these limitations are highlighted in this section.

- a) *Data is unrecorded:* Even though Germany claims that there is a reduction in criminal statistics cases, its implication in reality is highly restrictive in nature. Studies carried out by Federal Research Institute of Criminology of Lower Saxony indicate that there tends to be several unrecorded cases of child sexual abuse. These unrecorded cases get exposed by operations carried out by German Criminal Investigation Agency (Bundeskriminalamt) (Bussmann 2011).
- b) *Pornography is on the rise:* Rather than conventional problems like prostitution and sexual exploitation, child abusers prefer using child pornography in lieu of escaping punitive actions. Section 184 seems to be limited in dealing with this rising problem and needs to be amended as it lacks a broader policy agenda in the emerging context of a borderless age of internet (Dickinson 2007: 242).
- c) *Parental Responsibility:* Every tenth child in Germany will become a victim of physical violence during his childhood carried out mostly by the person holding parental responsibility. The Federal government has to take up responsibility to provide abuse free and peaceful society for children.
- d) *Relaxed punishments:* The Federal government has upheld the concept of protection by creating a system of punishments which includes fine and/or imprisonment depending on the court's discretion (both in case of minor or major harm). It is desirable to create and provide stringent punishments in case of sexual offences committed against children.
- e) *Loopholes in Implementation:* Several loopholes exist in Germany with regard to sex trafficking laws and its implementation. In 2011, German Foreign Minister was charged of mishandling visa policies which have far reaching implications on prostitution rings in Germany (Speigel 2011: 7). Prostitution rings which absorb trafficked children reaching German territories are internationally operating organised groups. Several attempts have been made time and again to expose them by German police and the BKA.

- f) Jurisdictional Issues: Paedophiles exploring pornographic content tend to escape legal traps because the implementation of these laws on ISPs situated in several jurisdictions is difficult and also due to the following reasons:
- a. Volume of the content is large: The amount of child pornographic material being circulated in German as well as global market is huge. Filtering the large amount of data, locating it and engaging in the process of deletion is quite a difficult task.
  - b. Steps for deletion has not been stated clearly: Despite ISPs 'obligation for taking down illegal internet content' (Gottscahlk 2011), the nature of steps to be taken to ensure deletion has not been clarified.
  - c. Locating pornographic materials in circulation is problematic: It is a highly non-pragmatic consideration of the state to ensure deletion of child pornographic materials. Such contents do not necessarily circulate on specific websites and they tend to pop up while exploring restricted IP addresses as well. Reporting, monitoring and deleting each and every content is not as easy as it seems.
  - d. Lack of international universal standards: The ever-expanding information and communication industry has attempted to devise standards for protecting children by engaging in hardware and software development. But the internet is a borderless commodity and its contents are strictly supervised in developed countries which tend to be rooted in liberal values about life, sex and relationship. The factor that explains which type of content is considered as 'inappropriate' varies in different contexts. Thus, 'self-regulatory and co-regulatory' models engineered, drafted and based on a countries individual consideration are the parameters that is considered while regulating the content available on internet.
  - e. Children tend to perpetuate child pornography: Lack of education and awareness about the negative consequences of engaging in the context of pornography makes children continue to be a part of this problem. Increased use of mobile and internet attract children to online dating services or other services that get advertised in normal websites. Out of curiosity, children may click these advertisements and fall into the trap of online predators and

paedophiles. By making false promises children are allured into sexual interactions and in several cases the entire process is filmed. Further, these online predators, which also include paedophiles, either blackmail these children for continued services or ask them to engage in production of pornographic materials in return for incentives. Thus, children need to be firmly educated on the pros and cons of engaging in social media and other networking sites.

The entire schema of laws for child protection and child rights, as codified by the constitutional law and contained in the substantive and procedural law of Germany, has sound contemporary relevance. It is also influenced by the administrative laws of Germany and rejects all forms of corporal punishments and abuses over a child. Every child born in Germany is considered to be a human being and entitled to all applicable conventions of child rights. This understanding is not solely the product of obligation on part of state to create laws and apply it but from an emancipated and empowered belief system which aims at protection of children from all forms of threat. Child abuse has been dealt by a variety of ways in the case of German Law. It is based on a sound ethical understanding that morality and theology are two separate understandings and should be kept out in considering norms of child protection (Gilbert et al. 2009) and that no matter what culture, religion and history has to say about adult-child sexual relations, it is in the best interest of a child to be protected from sexual exploitation of all kinds. The major responsibility of child protection lies with parents and German state assists and monitors in providing resources and aid in facilitating the process (Currie 1994: 274).

Finally, the provisions of German criminal law, coupled with the PCFRG, is a fine balance of criminal provisions and recuperative punishments for committing such crimes (Rogers 1976). Time and again, the penal code has expanded its ambit to cover all possible forms of exploitation meted out on German children. This ensures a mechanism of protection which is systematic and far more effective (Bales 1999). Furthermore, the German framework to ensure child protection is highly pragmatic in nature, borrowing international codes on curbing problems of sexual exploitation and using it in drafting domestic laws. Another important point to note is that the Federal Government has incorporated changes in penal codes concerning sexual abuse of

children and young people into the concept of protection in the emerging Internet era (O'Donohue and Geer 2014: 29).

The problem of child prostitution, both within and outside Germany, has compelled the government to reconsider its child protection policy. Germany and the world shares a common and congruent thought about sexual abuse (O'Donohue and Geer 2014: 48) and commercial sexual exploitation of children. Speaking simplistically, every nation-state considers its children as part of the vulnerable sections of society and owes a duty of protection towards them. With regard to the protection of children within its country, Germany has taken recourse to a stringent legal mechanism coupled with several unconventional initiatives. On the contrary, even though Germany has created provisions for punishing German paedophiles who harm children in other countries under extra-territorial jurisdiction, its implementation remains doubtful. There are several reasons for such a discrepancy, the most important being attributed to ineffective enforcement of German law for a crime committed in foreign lands.

Without taking the long-term negative implications of prostitution, it is one of the most attractive things for children in Germany. Nonetheless, approximately 3000 children are trafficked annually for providing sex service to clients within Germany. There are several reasons that allure children to engage in prostitution (Human Rights Report 2005). First, it is one of the easiest and profitable ways of earning money. In several places across Germany, children are earning as much as 500 tax free Euros (which differs according to the service provided) for engaging with clients. Second, prostitution comes with several emotional incentives. Children, especially girls coming from different circumstances have emotional insecurities which are made up for. Third, in several cases, it is a relief for children who come from families with extremely poor backgrounds. Additionally, there is high chances of violence in these families as parents are drug addicts or prostitutes themselves (Radford 2012: 76).

### **International Norms on Children in Germany**

The ever-growing international economic interdependence has a highly negative impact on children in the form of child sexual exploitation by transnational paedophiles. International and regional conventions and instruments that give birth to norms have far-reaching implications on a particular country's approach to rights of its children. These norms for child protection target the creation of universal standards for ensuring

a comfortable environment for children. Further, these international instruments oblige different countries, economically developed and developing, to create positive mechanisms to protect children. In this regard, Germany's legal framework has incorporated a range of international protection norms and guidelines.

<b>Name of convention</b>	<b>Full Form</b>	<b>Ratified On</b>
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination	21 Dec 1965
ICERD Art. 14	The International Convention on the Elimination of All Forms of Racial Discrimination	21 Dec 1965
ICCPR	International Covenant on Civil and Political Rights	16 Dec 1966
OP 1	ICCPR Optional Protocol 1	10 Dec 1966
OP 2	ICCPR Optional Protocol 2	15 Dec 1989
ICESCR	International Covenant on Economic, Social and Cultural Rights	16 Dec 1966
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	10 Dec 1984
OPCAT	Optional Protocol on the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment	18 Dec 2002
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women	18 Dec 1979
CEDAW OP	Optional Protocol to the Convention on the Elimination of Discrimination against Women	10 Dec 1999
CRC	Child Rights Convention	20 Nov 1989
CRC OPSC	Optional protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography	25 May 2000
CRC OPAC	Optional protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict	25 May 2000
CRC OPIC (Signatory, not ratified)	Optional Protocol to the Convention on the Rights of the Child on communication	14 April 2014
CRPD	Convention on the Rights of Persons with Disabilities	13 Dec 2006
CRPD: OP	Optional Protocol to the Convention on the Rights of Persons with Disabilities	12 Dec 2006
CPPED	International Convention for the Protection of All Persons from Enforced Disappearance	20 Dec 2006

Source: [www.humanrightslibrary.com](http://www.humanrightslibrary.com)

Germany's obligation towards mitigation of paedophilia and protecting its children from this menace is also reflected in its commitment to international conventions. These conventions have multi-layered objectives and visions and calls for proactive measures

by states. Germany ratifies several international treaties by enforcing them before its legal courts and administrative institutions. Germany's rationale behind protection of children is deep-rooted in its belief that minors are incapable of taking care of themselves from external encroachments. Thus, the state has to shoulder this responsibility by constantly improving its internal legislations in consonance with international understandings. In this regard, Germany relates to regional instruments emanating from the EU and the CoE as more applicable within its domestic framework than others. Yet, the initial referral framework of all laws regarding states obligation to protect children from sexual exploitation within Germany is based on the UNCRC.

Germany ratified the UNCRC on 5<sup>th</sup> April 1992 in the hope that it would be one of the landmark conventions in protecting children from all forms of sexual abuse and exploitation (Goode 2011). However, while submitting its response, Germany expressed the limitations in adopting the convention as a whole and clarified national laws as prevailing guiding forces in interpreting statements of the convention. Nonetheless, as per Article 3 clause 2 of the convention, Germany pledged to play its role in ensuring 'well-being of the child' by drafting relevant legislations. Further, the convention directs 'all state parties to undertake appropriate legislative, administrative, and other measures to implement the rights recognized in CRC' (UNCRC 1989) along with 'maximum availability of resources' to ensure domestic and international cooperation. The parties to UNCRC are also required to ensure the availability of resources to the maximum extent possible, within the framework of international cooperation. The spirit of these foremost directives is reflected in the Basic Law of Germany particularly in Article 1 (entitling basic human dignity and freedom to children), Article 6 (guaranteeing basic family and welfare entitlements), Article 6 (2) (combined state and government responsibility in protecting children) and Article 6 (3) (child protection from sexually exploitative at extra-legislative level in consonance with Article 19 of the convention).

Germany has ratified an array of provisions that protect children of different contexts and backgrounds. As the first step in upholding human rights in general and child rights in particular, the ICCPR, 1966 was restrictively adopted by East Germany (which united with West Germany in 1990) in 1976. The restriction is highlighted by the exclusion of Art. 41 which allows an external body (the Human Rights Committee) to report and monitor the situation of children under this provision. The German

government made it clear that its criminal law and penal procedures are in accordance with the rights entitled in the European Convention on Human Rights (EHRC) and it does not recognise inter-state bodies as such. In order to ensure rights to its children, Germany also became a signatory of the Convention on the Elimination of All Forms of Discrimination against Women and Children (OP-CEDAW) on 15<sup>th</sup> January 2002.

Child protection measures in Germany deal with an array of parameters and aim at multi-target mechanisms. In 2004, Germany ratified the OP-CRC-SC which provides a tripartite objective for the state in protecting children (Bussman 2009). Further, the Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict was ratified by Germany in 2004 (Asli 2011). This was made to protect children from the negative repercussions of involvement in armed conflict (IBCR 2010).

In some cases, Germany has reflected its reservations in accepting an international provision as it is (Bales 2000). Germany tends to make interpretative declarations to several articles of different conventions as and when it clashes with domestic laws. The state clearly asserts that the core guiding component of protecting children is its domestic law which in turn leads to specific reservations to international norms (Abbasi 2011). Thus, Germany makes it clear that on the question of custody, protection and equal rights, there can be no standardised claims in Germany (Dickinson 2007). Negating the application of the UDHR, Article 25 (equal social protection to children born out of wedlock or not), ICESCR, Article 13 (2) (non-discrimination for any reason) and UNCRC (Goode 2011), Article 4 (1) (equal protection to legitimate and illegitimate children) and Article 18 (questions of parental custody in case of legitimate and illegitimate children), Germany clearly reiterates that these guarantees shall not be necessarily provided as there are chances of infringements (Hjarno 2003: 89). Therefore, Germany has very clearly indicated that it is a signatory to these conventions but with several reservations.

The most serious reservation of Germany to the UN conventions comes in drafting domestic policy for immigrant children. These policies serious reservations in drafting policies that favour immigrant children. In lieu of the UN's provision on immigration, Article 6 of the German constitution clearly mentions that 'nothing in the Convention may be interpreted as implying that unlawful entry by an alien into the territory of the

FRG or his unlawful stay there is permitted; nor may any provision be interpreted to mean that it restricts the right of the FRG to pass laws and regulations concerning the entry of aliens and the conditions of their stay or to make a distinction between nationals and aliens' (Edith 2007). In a very limited manner, Article 6 of the German constitution guarantees rights to children of immigrants. Yet, this is more of a rhetoric and Germany has serious reservations in including higher level of entitlements for child immigrants (Currie 1994).

### *International Labour Organisation and Child Rights in Germany*

Labour laws involving use of children for sexual purposes within Germany has not been codified in a single document. Several statutes, conventions, court proceedings and industry protocols have referred to the use of children as sex workers in the economy. It was with the International Program on the Elimination of Child Labour in 1998, an initiative of the ILO supported by the FRG, that brought up the issue of child labour in the sex economy for the first time. Since then till now, Germany has initiated all possible capacity building measures to combat the use of children for sexual purposes (ILO 1998). The ILO has received unconditional support, monetary and non-monetary, to contain perverted forms of child labour.

In achieving these objectives, the German state uses two simultaneously complimentary approaches (ILO 2003). On the one hand, it seeks to build up technical support, financial inputs and ensure infrastructural safety to children to prevent their involvement in labour services and on the other, it builds up strict vigilance mechanisms involving children, parent, teachers, support-providers and care-givers to mitigate the harmful effects of involving children within the sex economy (IOM 2001). The Second Law, 1997 was one such mechanism that heavily borrowed from EU provisions and made strict legal exceptions to child labour laws. Among other things, this law amended the earlier Young Workers Protection Law and stipulated several norms regarding the age, type of work, duties of the employer and other important guidelines pertaining to the involvement of children in labour (ILO 2005).

### **Regional Instruments**

Germany is a member of the Convention on the Protection of Minors since 1961 and this has been of great importance in German legal practice in the past. However, the



influence of this convention is waning as within the EU, it has been replaced by community legislations. In 1996, some thirty-five states signed a replacement for this Convention, hoping that it might apply also to countries beyond the European civil law sphere. This replacement Convention, namely The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children 1996 has already been ratified by five East European member states of the EU. The other EU member states had agreed to ratify it jointly, possibly in 1996, but this has not happened yet (Kilching 2002). In 1980, Germany ratified the European Convention on the Adoption of Children that harmonises substantive adoption laws among the treaty members. In 2002, Germany ratified The Hague Convention on the Protection of Children and Cooperation in Respect of Inter-Country Adoption. In addition, Germany ratified the European Convention on the Exercise of Children's Rights in 2001, together with a statement specifying the matters of family law for which the Convention would be applied. According to German legal literature, the German level of compliance lives up to the mandatory portion of the Convention.

In 1997, Germany had initiated a joint action programme with other European countries by signing the Treaty on EU Concerning Action to Combat Trafficking in Human Beings and Sexual Exploitation of Children. However, the standing reference to child trafficking in Germany was provided in 2000, when the government ratified the Convention on the Rights of the child concerning selling and trafficking of children, child prostitution and child pornography. This became the basis of all its further bilateral and multilateral initiatives to combat child sexual trafficking (Davidson and Gottschalk 2011). The European Conference on the Protection of Children Against Sexual Exploitation in 2001 highlighted the proactive approach of the state by forming a national task force which stressed on containing all forms of child trafficking in Germany. The standards of protection of trafficked children is based on international standards with Germany being a signatory to European Trafficking convention together with the Trafficking Protocol since 2006 (BMFSFJ 2007). The German legal framework largely encapsulates several provisions dealing with child trafficking in particular. Since 2009, it has reworked its view in light of the increasing statistical records on child pornography (Ahealey 2004). In 2002, the Council Framework

Decision dealing with the process of child trafficking recommended several changes to German legal mechanisms.

There is a strong adherence to international and regional mechanisms specifically initiated for curbing child sex trafficking in Germany. The domestic law is an honest reflection of the German state's effort to mitigate child sex trafficking, the major framework wherein paedophiles gain access to children. It incorporates a range of international and regional norms created in order to contain child trafficking in Germany. At the state level, several unconventional methods have also been employed to make German system friendly to trafficked children. There are numerous counselling and assistance centres that have been built in different parts of Germany so as to provide directions and assistance. Also, a cooperative mechanism is built where NGOs and legal bodies work hand in hand in identifying potential trafficked children.

### **NGOs Child Rights and Protection of Children in Germany**

Non-state actors which include several actors like Non-Governmental Organisation (NGOs) and Media, play a crucial role in any society. There is no universally accepted definition for non-state actors. One reason possible for this is lack of a long history for non-state actors (Ranke Heinemann 1988: 21). They define themselves differently on the basis of the agendas that they adhere to and arenas that they fight for. Non-state actors play a crucial role in adjudication (Kristeva 2003:83) and contribute immensely in the making of international law (Kitzinger 1988). International law is designed by states as a check to malpractices within a global political, socio-economic and cultural framework. However, many agendas that get ignored are highlighted by non-state actors and they help in the expansion of international law by applying pressure through democratic means. They act as a network and are motivated by 'casual and shared beliefs' (Klaus 2012:29).

The NGOs in Germany play a crucial role in pressurising the state to increase welfare schemes and focus on child protection (Trome et al. 2011). These are institutions that provide children access to education, health benefits and service benefits entitled by the state. Their role and sanctity are legally ordained by Section 176 of German Civil Code which highlights state's responsibility in ensuring protection of child entitlements. The issue of child rights and protection from paedophiles has been an agenda of several domestic NGOs of Germany. In consultation with global bodies these local

organisations target at maintaining international standards for protection of children in Germany (Sotodeh 2008). Several campaigns have been initiated to cater to the requirements of children *vis-à-vis* the operation of paedophile networks.

<b>Scope</b>	<b>Name of NGO</b>	<b>Main Objective</b>
Global	Amnesty International	Human Rights in general- Child Rights as well
	Human Rights Watch	Child Sexual Abuse
	Human Trafficking-Polaris Project	Child Trafficking
	Children of Night	Trafficking in Germany
	Share Hope Foundation	Sex Trade in Germany
	World Children's Fund	Children in disaster, orphan children
	Children for Tomorrow	Children, Immigration, Narcotics, Drugs & Crime, Violence Prevention
	Action for support of Deprived Children	Education and Basic Necessities
	Bel Corporate Foundation	HIV/AIDS, children's protection
	Children International	Basic necessities to all children
	Conrad Hilton Foundation	Child Rights for Homeless and Destitute
	Child Watch International	Child Rights
	Human Rights Internet	Human Rights in general- Child Pornography in specific
	Children's First International	Child Rights
In Germany	ECPAT-Germany	Child Trafficking
	KOK	Family Welfare
	DKSB	Child Rights
	Save the Children- Germany	Child Protection and child rights
	Kinderstern	Child Aid

Source: [www.hrlibrary.umn.edu](http://www.hrlibrary.umn.edu)

Within an array of NGOs, some, like ECPAT Germany, Save the Children, KOK, Kinderstern and the Deutscher Kinderschutzbund (DKSB), get high degree of attention as the largest existing NGOs working for child rights, their protection mechanisms and working for children's benefits. Each of them brings out status reports on the condition of children, both negative as well as positive by providing facts. The modus operandi adopted by NGOs is unique and based on the principles of co-operation and co-ordination. While doing this, the national NGOs tie up with regional and local bodies and establish centres of communication to facilitate continual counselling and support sessions for children. Use of conventional awareness mechanisms like lobbying, rallying, advertisement, media campaigns, workshops, conferences and seminars is a common feature in Germany. By co-operating with state, NGOs aim at targeting two main things: increased percolation of current legislations and programmes targeting mitigation of child sexual abuse and pressurising the state for creation and

implementation of new laws and norms that provide better protection mechanisms to children (May-Chahal and Herczog 2003: 93).

In 1997, the DKSB initiated a vigilance march in an attempt to spread awareness among people about paedophilia and its recurring impacts on children. The move came after a Green Party leader declared a manifesto that accepted paedophilic inclinations as just and fair. Several agitated parents and care-providers came on streets to express concern over the disdained approach of the Green Party towards paedophilia. Children also participated in this agitation and demonstrated a strong anti-paedophile protest. This protest was accompanied by the use of slogans, posters, burning of cars and other means to express high level of concern for German children. Even though these measures clearly reveal an anti-paedophile approach towards paedophiles, nonetheless it has been an integral part of, and finds greater tolerance and acceptability in, German society.

Opposing any kind of subtle approach to paedophilia, NGO campaigns have also directly targeted at exposing paedophile rings in Germany. In the early 1990s, after a series of campaigns for German sexual liberation movements, NGOs adopted an anti-paedophile orientation for a long period of time. They began exposing paedophile networks and potential paedophiles in society. This approach was based on a dual orientation of 'identification and then indignity' of paedophiles within society. Several documents containing the details of paedophiles, like name, photographs, residential address, occupation and other relevant information was widely distributed among people in Germany. Along with this initiative of identification, KOK Germany aimed at pressuring the government for shaming them in media, public and other platforms and penalising them under the due provisions of the penal code and criminal law. The government took proactive steps in supporting these NGO initiatives and made it compulsory for paedophiles to inform, within 3 km of their neighbourhood, about their convicted history and sexual inclinations (BMSFJ 2011).

Since 2005, German NGOs and others do not perceive paedophilia as a crime until and unless it is acted upon. This makes several NGOs deal with the problem by providing alternative schemes and ways. One such project, the 'Don't offend' campaign, started in Germany with a sensitive approach towards paedophiles. It read 'Do you love kids more than you'd prefer? There's help' and was offering a therapy to paedophiles who were finding it difficult to deal with constant attraction towards children (Lalor and McElvaney 2010: 205). It was a private initiative of Berlin University and was

financially supported by the government which saw this as the best recourse in dealing with potential paedophiles. Even though Germany has a strong stand against paedophiles, such approaches are attempted to ensure that potential paedophiles and convicted paedophiles find a way to deal with the perceived 'mental disorder' towards children (Lampe 2002: 7).

Parents, the primary caretakers of children in Germany, were given the basic information. They have access to all types of information concerning the whereabouts of paedophiles in their neighbourhood. This initiative was based on two major objectives. First, awareness about the identity of their neighbours would make parents more vigilant and conscious. Second, it would act as a deterring factor on the paedophile who would be scared of legal implications if found engaging in acts that cause harm to children. The KOK counselling centres provided information to approaching parents about paedophiles living in their neighbourhood. Several pamphlets were distributed across Germany listing guidelines for parents and children on how to protect themselves from encroaching paedophiles (O'Connell 2005: 36).

Pro Familia has stressed on the need of keeping parents informed about state activities initiated against paedophiles. The strategies of German government in mitigating child sexual abuse at the hand of paedophiles is distributed among parents to keep them abreast. It also acts as a communication link between police, parents, victims and perpetrators. This link helps in monitoring all the activities of paedophiles in a co-ordinated and coherent manner. Any lapse on the part of any one of the bodies is mitigated by ensuring an inter-connected approach to the problem. By involving parents, the risk of sexual offences by known people or parent themselves is also eliminated. This approach reinstates the right of parents to know, be aware and act whenever required and a clear-cut demarcation between vigilance and vigilant action is ensured.

The role of NGOs has transcended from being active agitators to becoming facilitators in curing paedophile mind-sets. In contemporary German society, NGOs act as a storehouse of information about German convicts who approach some of these groups who organise several rehabilitation programmes. At the same time, they raise their voice out against sexual atrocities on children and work for the protection of the rights of children. They share a duality of concern towards children in Germany and paedophiles at the same time. The anti-paedophile campaign has built momentum by

believing in rejecting the act of abuse and not the abuser. The NGOs build momentum for such spaces and belief system. They re-engineer disqualification of paedophiles from the society as a whole but call for strict mechanisms in mitigating paedophilic tendencies and habits. Thus, the role of NGOs on one hand is to voice for a protected German society for children and at the same time consider paedophile narratives in looking at alternative mechanisms in solving the problem.

## **Media and Child Rights**

The term ‘vigilance’, ‘action’, ‘moral panic’ and ‘crisis in society’ in talking about paedophilia in Germany surfaced with the concerns raised by media. Media produces alternative sources of knowledge which help in re-interpreting and re-analysing contemporary occurrences (Vogel 2000). Media as a source of information is highly critical of state policies and deeply imbibed in creation of discourses on power. Thus, it helps to provide a new light to conventional ways of looking and analysing events and processes. Media, in Germany, has time and again brought to light the ‘evil’, ‘monstrous’, ‘perverted’ and ‘bestly’ activities carried out by paedophiles over ‘innocent’, ‘young’, ‘unaware’ and ‘vulnerable’ sections within its society.

By analysing media narratives, two distinct and opposite images about paedophilia in German society emerges. First, while on one hand, a more concerned section of society is invoked which includes ‘parents, children, nation, experts, government officials, police, judges and other protectors’, on the other, are the sex-offenders, paedophiles or child sex abusers who exploit children for sexual gratification (Wilpert 1998). Secondly, in light of contemporary media concerns, Germany has a strong stand towards mitigation of sexual abuse but does it is not concerned in bolstering this issue as that of a national emergency.

In the 1960s and 1970s, media focussed on issues of foreign policy within the context of cold war. It was only with unification of Germany in the 1990s that both print as well as social media were full of captions that reiterated safety, security and protection of children from paedophiles. Several titles of reports such as ‘Save the Kids’ and ‘Predators and Children’ underlined the horrific tales of dangers that children were being exposed to in Germany (Beaulieu 2008). These were accompanied by statistical data on child prostitution, child pornography and child sexual offence cases. In this regard, a moral panic rose across Germany that paedophiles are people with terrible

mind-sets and needed to be kept in check. International eyes were on Germany and a pro-active stand by the government was awaited. Thus, the German government made attempts to rework its strategy by making several amendments to child rights provisions and by beginning anti-paedophile operations. Media also became a tool of both domestic as well as international NGOs and a politics of interest began to directly target the tragedy as a danger. Increased media attention led to a division of identities where the offender was seen as monstrous and all others as protectors of children.

*The Local Jaw*, a newspaper, had claimed that this approach of the state would be a better way in dealing with paedophiles as it has led to success in different parts of the world. The earlier approach to paedophilia was premised on the basic fact that paedophilia can never be cured. Even if the WHO treats it as a sexual disorder, it is still a statistically proven fact that paedophiles re-offend even after being convicted (WHO 2008). The grandiloquent claim that makes this belief successful is seen in repeated convictions of paedophiles not only in Germany but also outside its borders. However, with the passage of time, concerns were raised about the human rights of paedophiles in the European Court of Human Rights (Kindler and Schmidr-Ndasi 2011). The judgment was in favour of the convicted paedophile and this was seen as a major move in European history. It prompted judges, government officials, law makers and NGOs to redirect their earlier approaches to paedophiles. Furthermore, new discourses were born out of social media's initiatives that echoed more sensitive tactics in ousting paedophilia from society (Johnson 2011: 75).

Today, media concerns in Germany are grounded in arguments that explicitly vouch for civil rights and freedom of paedophiles. This alternative principle began with the Dunkelfeld Project and its widely acclaimed repercussion of German paedophiles and in turn the threat caused to children (Beier 2012: 2). As against earlier times, when paedophilia was perceived as 'evil', the German state's approach anti-demonises paedophiles and stresses the 'curability' of paedophilia. Recent reports by newspapers and media channels highlight the belief of the state in dealing with the problem of child sexual abuse through rehabilitation, knowledge, awareness and treatment. It is based on the basic presumption that paedophilia is a threat to communities as well as authorities and the best way to deal with it is to accept its presence as a disorder. Even though it cannot be eradicated or eliminated, nonetheless, these tendencies can be controlled and 'acted upon'. Following this rationale, the media has changed its earlier orientations

and reports titled 'Administration of Risk' and 'Dunkelfeld Project: a pragmatic not moral approach to eliminating danger' have become part of media narratives (Fricker et al. 2003: 17). These opposing narratives speak of the bewildering approaches that emanate from knowledge drawn from professional sources and those from mass understandings. Both these alternate understandings aim at the danger and the elimination of this danger from society. However, the balancing between human rights and child protection mechanisms is overlooked in the former rather than the latter, adopted by Germany, and is based on a rational and pragmatic consideration which counterpoises the moral panic belief and suggests a humane way of treating paedophilia existing within the society.

Thus, a plethora of voices invoke different concerns for children exploited at the hands of paedophiles. The centrality of all approaches, institutions, agencies and actors is to ensure child protection from sexual abuses and exploitation. There are several legal, international, human rights and institutional approaches in dealing with this problem. Despite such legal and regulatory framework, Germany is unable to draw effective channels to protect immigrant children, trafficked children and children of developing countries like Thailand etc. This existing reality shows high levels of dependence of children from weaker sections in Germany upon the sex economy. Thus, two divergent views emerge in analysing the legal framework, NGO initiatives and media campaigns in Germany. First, the governance of paedophilia is effective only when its reference is clearly made in international and national conventions. Secondly, the two extreme perceptions about paedophilia as disorder or as perversion would never yield a pragmatic ground for mitigating paedophilia and its implications.

### **Practice of Child Sexual Exploitation**

Germany takes a strong stand against sexual exploitation of children at the hands of paedophiles. It has committed itself to the creation of a safe German society in which children are secure and protected. Despite such a dedicated vision in mitigating the menaces of child trafficking, prostitution and derogatory child pornographic materials are rampant across Germany (Aheally 2004). The paedophiles create an environment where threat is always looming over children. Child welfare services have fuelled the development of stringent norms against sexual exploitation in Germany (Albrecht 2012). Without ambiguity, Germany has created a strong administrative as well



constitutional mesh in dealing with paedophiles both within and outside its borders but several loopholes emerge in its implementation at the international level. The study assumes a priori that paedophiles emerge in developed countries, travel to developing countries and create networks with local paedophiles. This becomes the chief problem in mitigating problems of sexual abuse in the world (Thyen and Irene 2003).

Children are abused in several ways, most commonly by closed ones, trafficking for the purpose of sexual exploitation, pornography and increasingly become prevalent is by paedophiles. The German prevalence of sexual abuse by paedophiles is not minimal. Rather, estimates indicate a surge in sexual exploitation activities. According to Finkelhor (1994), rates ranging from 3% to 6% for girls and 2% to 8% for boys of German origin are exploited every year. This number is very less as compared to Lampe's (2002: 51) review of 36 % girls and 15% boys under age of 16 being trafficked and sexually abused by paedophiles in Germany. May-Chahal and Herczog (2003) stated that more than 45 % of girls and 22% percent of boys engaged in prostitution were also used in porn industry and were between 14 to 16 years of age.

As per a study conducted during the course of this research in 2017, it was witnessed that in a sample of 50 people belonging to different nationalities, 20% of people desired inclination of looking at nude content and sexual activity that depicted children below 10-16 years of age. Moreover, 10 among the 50 said that they have been asked private questions related to experiences of masturbation and other such sexual experiences both online as well as in brothels. Paedophiles look out for opportunities so as to satisfy their demands either by watching child pornographic content or by making children watch such content together (UNICEF 2007: 12). Such samples indicate that children have time and again been targeted as objects of sexual gratification by paedophiles.

Despite several laws and strict monitoring by Germany, WHO (2006) estimated that 1000 children are brought into Germany each year and forced into sexual intercourse to cater to a huge market of paedophiles within German borders (BKA 2016). Despite these alarming numbers, it becomes worse when one looks at the number of German paedophiles in countries like Thailand who engage in sexual activities with approximately 0.1 million children (Pereda et al. 2009: 76). Thus, one can clearly see that the prevalence rate of sexual exploitation of children is very high in case of smaller income countries as compared to German children are better protected, yet still exploited.

The practice of sexual exploitation of children in some form or the other is a common occurrence in all countries of the European union. The estimated numbers and proportion to actual occurrences in highly discrepant due to the limited levels of research on the topic. It will be evident that the nature of child sexual exploitation by paedophiles tends to show a practice where Germans have an inclination to exploit trafficked children more than their own children chiefly owing to the stringent punishments over such acts. Paedophiles have engaged with children at various levels by incorporating different mechanisms to ensure access to children. In this section, the inherent dynamics of such interactions is analysed by reinvestigating the frameworks that allow space for child sexual exploitation. The tripartite framework within which paedophiles seek to unravel their desires and find satisfaction is child pornography, child trafficking and child prostitution in sex industry and tourism (Kim and Jamal 2007: 74). This section discusses the ramifications of this tripartite framework, the ways in which Germany has tried to mitigate its negative consequences within its borders and finally, it brings out the differences in the approach of Germany towards children other than those of German origin (Hussey et al. 2005: 96).

### *Child Trafficking*

The definition of trafficking contains implicit nuances that challenge theories of compulsion and choice. In common parlance, child trafficking is seen as illegal displacement of a child from his/her native habitat to a new territory, within its native borders or across borders. It could be both voluntary (involving the consent of the child or his/her parent in return of some gains) and involuntary (trapped, kidnapped or forcefully migrated for the individual benefit of the trafficker). The purpose of such displacement could be varied yet it is considered an unlawful act subject to legal scrutiny. Germany has been an important and famous destination country for child trafficking from all across the world. This is due to rampant demand among paedophiles and sex offenders for sexual gratification from children. The politics of the entire process becomes clearer when one looks at the number of German children that are trafficked to other countries for sexual purposes, which is negligible.

As per the data released by the BKA in 2016, the average number of children trafficked annually to Germany was 3500. Out of these trafficked children and those who were registered victims, 15% came from East European countries and 70% from South-East Asian countries. The working conditions of these children is deplorable with as many

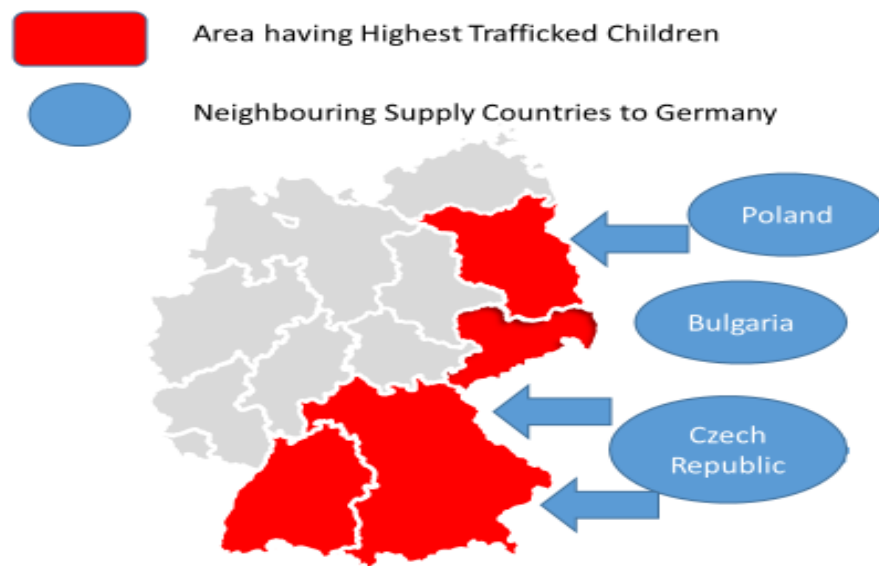
as 4-5 customers on a daily basis (Future Group 2006). Several techniques are used by the traffickers to intimidate children in complying with the demands of the clients. Fear and force are two of the most important tools used by them to imbibe compliance among children. Thus, fear of deportation, death, physical and mental torture, snatching up of identification and travel documents, etc. are some of the easiest ways to prevent trafficked children from complaining.

The children from weaker economies are at high risk of getting pulled into the clutches of traffickers. An overall analysis postulates two simultaneous processes that cause child trafficking networks based on consent of the child to occur and sustain in Germany. First are the 'push factors' in the native country of the child being trafficked, like the lack of education, poor financial backgrounds and lack of employment opportunities. Second, or the 'pull factors', like better life conditions, source of employment and steady income which allure children to come into destination countries (Follmar and Rrabe 2009; Albrecht 2012). At the same time, an analysis of factors that sustain child trafficking networks on the basis of force and compulsion, prevalent among children below the age of puberty age, is due to negligence and victimisation by parents or care provider.

The process of trafficking children from another part of the world into Germany involves a complex chain of events. Keeping in mind the goal of commercial sexual exploitation, children from economically weaker states and lower child rights compliance are targeted. The recruitment process involves consent, force, abduction and other fraudulent mechanisms (internet, illegal adoption, false dating offers and surrogacy offers) to find children. In Germany, several trafficking rings are contact points that help in illegal trafficking of children from one country to another (Davidson and Gottschalk 2011). It is a complicated process that involves checking, scrutiny and monitoring at different levels. Yet, it is not a very difficult task to bluff German authorities at the border by making children look beyond their age and forging documents of identification as these are more porous borders with easy inland connectivity (ILO 2003).

Paedophiles who seek children for sexual gratification have interconnected platforms that provide contact for trafficked children (Ebadi 1994: 8). Europol reports have suggested the involvement of transnational networks is usually run and managed by local criminal groups sometimes involve paedophiles as well. In some cases, the

paedophiles are the direct receiving points of children brought from ‘supply’ countries. Mostly, paedophiles are those nodes that contribute in sustaining these trafficking mechanisms rather than becoming directly involved in it (Kirshenblatt-Gimblett 1998: 22). Due to the deplorable position of the victims, paedophiles use coercive mechanisms to allure them into engaging in sex. Yet German law, police force and BKA is very specific in detecting such tendencies among paedophiles and thus, having access to children in Germany is not as easy as it seems (Dubowitz and Gustavson 2000: 17). Thus, fear of law is one reason that prevents German paedophiles from encroaching child prostitutes within Germany. They aspire to move out in order to have uncontrolled and unmonitored sex with children.



**Fig. 3.1: Channels of Trafficking to Germany**  
 Source: [www.mapsofworld.com](http://www.mapsofworld.com) and [www.mapsofeurope.com](http://www.mapsofeurope.com)

Trafficking is done for several reasons, the chief being commercial sexual exploitation. This is not a recent phenomenon as all through the 1980s and the 1990s, children from developing parts of the world were being sent to Germany to ensure the sustenance of ‘flesh trade markets’ and ‘availing children for red light areas’ (ILO 2005). The three chief areas where trafficking is quiet common is Berlin, Frankfurt and Hamburg. These are trafficking capitals of Germany, full of children trafficked from foreign countries. The purpose for trafficking is not only sexual gratification; it also involves other forms of deceit and fraud. The average income of a child engaged in sex work is between 50,000 to 2,00,000 Euros per year (Robert 2010:29). This is one of the main incentives that lure parents, children and other facilitators in continuing this sex trade. In some

cases, children are trafficked by using marriage as a way of legalising action. In a recent case reported by the German Criminal Investigation Agency, a Thai girl was married to a German paedophile on the pretext of love (ECPAT 2005). The age of marriage in Thailand is 17 years (parental consent) and after marriage the girl was brought to Germany and her husband and his paedophile friends constantly abused her for group sex and pleasure (Future Group 2006).

Trafficking of children is done from all parts of the world into Germany, yet the majority of children come from Southeast Asian countries like Thailand or East European countries like Bulgaria, Romania and Slovakia. The easiest way to smuggle children is by local paedophiles, using contacts and having direct access to brothels and prostitution centres (IOM 2001). As per Youth and Child Service Act, custody of unaccompanied trafficked children is given to child care centres from where high number of abduction cases are reported and children are forced to be sex slaves (Mehmet et al. 1999: 56).

The biggest impediment in studying about the situation of trafficked children in Germany is the amount of significant data available on the same. There are several reasons which have contributed to the lack of authentic and reliable data both at the level of Germany or at the EU level. The most important reason is the lack of a data collection institution for keeping a track of child trafficking for commercial as well as non-commercial sexual exploitation. Both at the regional as well as at the level of Germany reliable statistics on trafficking is absent due to deficit in collection channels. The scope of the problem is not appropriately defined thereby making the various data collection systems insufficient in explaining the same. Moreover, the offence gets deeply undervalued due to lack of knowledge about the entire process of child trafficking. Further, the legal definition of the term is limited involving the idea 'movement of children for sexual purposes'. This makes it difficult to ascertain illegality in every movement of child that takes place across borders. Finally, the nature of the crime is self-deceptive wherein the agents as well as the involved victim try to hide, as much as possible, the details about the offence thereby making detection of the crime very difficult. Thus, indicators and statistics on the reported numbers are far less than the actual practice.

Trafficking involves purchase and sale of women and children from Central as well as Eastern Europe. Germany has become a market of red-light areas with several thousand

children being brought into the borders from South East Asia as well. Thailand being a major exporter of girls for commercial sexual exploitation is one of the most favoured countries of Germany. Children are traded at very minimal prices which is now being referred to as new form of 'slavery'. According to reports given by the German police in 2016, 70% of children working in Berlin, Frankfurt or Hamburg are from foreign lands. Germany has several pull factors that attract child trafficking for commercial sexual purposes and Thailand has several push factors that bend the minds of young children and parents alike to send them abroad.

In Germany money is not the only incentive used to attract little girls and boys through trafficking. Trafficking is done by using unconventional modes like the Internet, personal recruitment agencies, advertisements, kidnapping etc. On several occasions children are lured into this profession by false promises of different working conditions and lifestyles. In certain cases, involving pre-puberty children, babies and infants no stringent process or mechanism is required to engage children in prostitution. They can be easily trafficked and used as means to enjoy sex by paedophiles.

In Germany these trafficking networks are created and run mostly by gangs which comprises of local goons and criminals. Organised crime concerning the trafficking of children has not been found in Germany though human trafficking has produced indicators about the same. Paedophiles make several attempts to ensure the existence and continuous operation of trafficking channels as they seek to constantly engage with children for sexual gratification. In certain cases, demands raised by paedophiles become the chief reason for trafficking. Thus, while paedophiles are not involved actively in the process of trafficking, they become the main reason for its occurrence. These demands motivate the traffickers to ensure continuous supply of children to paedophile rings and sex markets in order to generate profit. However, profit is not the sole reason that makes traffickers engage in child trafficking. Sometimes paedophiles themselves become traffickers who ensure satisfaction of their needs and demands. In such cases, being the main agent of child trafficking, they escape payments for sexual acts to some other person and yet gratify their needs.

In 2004, Germany initiated a historic move to amend the provisions in its law with regard to trafficking of children under section 236 of the German Penal Code. Since 2005 it is now regulated under section 233 and 233a and 236 of the Penal Code. It is limited in nature and applies only to the 'victim of the offence to children below 18

years of age' exclusively considering foster care and known relatives as the real oppressors. This narrow scope of application becomes the chief limitation in dealing with child trafficking by unknown people, in this case the paedophiles. Thus, trafficking has been subjected to known family circles or people involved in 'duty to care' perpetrators, paedophiles find narrow escape out of such legal definitions.

Thus, four observations can be made with regard to child trafficking in Germany. First, while on one hand, Germany is ratifying several treaties and conventions, on the other hand, its move to legalise prostitution would exacerbate the plight of children further. Secondly, the paucity of authentic and reliable data on the number of trafficked children makes this an issue-area filled with controversies. There is clandestine behaviour among states to conceal the actual degree of the problem and report in a minimalist fashion. Thirdly, being act of criminal nature it occurs in a hidden manner and police reports remain non-authentic in such cases. Lastly, in 2004, an amendment for children trafficked illegally adopted a sensitive approach by making provisions for 'permanent residency' to immigrated children in Germany (Williamson 1998: 28).

Germany bases its anti-trafficking policy on the standards mentioned in European Trafficking Convention and not on the UN Trafficking Protocol. It has been postulated that the European Convention contains pragmatic mandates, high degree of contemporary relevance and deals with all types of protection mechanisms for children. Article 14 of the Convention has high degree of German acceptability. It provides residential assistance to children who have been trafficked and caught engaging in sexual activities in Germany. Coupled with this assistance is the provision for providing financial assistance and other forms of monetary opportunities for the sustenance of the children. There are specific rights that have been bestowed upon a trafficked child in Germany: The Victim Rights Reform Law, 2004 assured third-party support for assistance all throughout the case, provision for an interpreter in case of a different native language of the child and reflection period stay. Additionally, trafficked children are also given access to basic entitlements like shelter and food (Qualy and Palmer 2008).

### *Prostitution*

Child prostitution is an ever-increasing problem that causes troubles to children both within the borders of Germany as well as outside. The government has taken all possible measures to reduce its ramification and adopted strict legal stand against it. Sexual

alliances with children below the age of 14 years is considered punishable depending upon the age limit. Hans-Jorg (2012: 55) shows how children on an average earn 500 Euros per day by working on these dimly lit shacks along the Poland-Germany border. Annually, this adds up to approximately 390 million Euros which is shared between these shack owners, agents and other people in these transnational networks. Thus, child prostitution in Germany has created a new form of slave markets, wherein the slave renders service and the master pays the cash (Harnisshmacher 2010: 104). To curb all this, the German government has not remained silent but has adopted campaigns against child prostitution, several cases of sexual abuse has also been registered and penal codes invoked on the basis of severity of an act resulting in imprisonment up to 15 years. However, it has been in rarest of rare situation that a person has been given 15 years of imprisonment and this becomes a chief impediment in accepting German initiatives as successful.

The Czech-German border is no exception to such acts of violence, crime and exploitation. According to several criminal psychologist groups, prostitution is on the rise in these areas with as low as 6-year-old children, both male and female, being sold to German paedophiles (Albrecht 2012: 79). It is very easy to locate and have access to children in the Czech Republic as most of them roam around in supermarkets, malls, gas stations and other visible places. TAT (2018) released a document that showed how children were handed over by parents to paedophiles on an hourly basis. Some little old children tend to negotiate on their own about payments, place of rendering services, timings etc. The main reason behind the selling of bodies on the Czech-German border is high addiction to drug, poverty etc. The main reason why children sell themselves so easily in East European borders is because they are brought to these places through Asia, especially places like Thailand, Cambodia etc. The main objective of the trafficked children is to engage in prostitution, earn money and send money back home. Bavaria and Saxony are the two main German areas that are the main exit points from Germany to these areas as they are connected by land.

Child prostitution is a new form of slave market (Harnisshmacher 2010: 104). In 2016, according to the records provided by the police, about 3500 children were the victims of sexual exploitation and violence (BKA 2016). The German government, by effective collaboration with the tourist industry, have made notable advances in the area of dealing with the problem of sex tourism. In Germany, a substantial proportion of cases



of trafficking are with respect to entering illegally in the country or other immigration law violations (Williamson 1998: 31). In collaboration with the tourist industry, international organisations, and NGO, the government has tried to highlight the issue of sexual exploitation of children in tourism and to promote countermeasures required to prevent the same.

Prostitution in Germany is not only an adult created market wherein the adult pulls children to create a mesh of exploitation and oppression. In this case, child prostitution is made to exist through chain of connectivity wherein one engaged minor tries to attract another to prostitution by wooing the other. The minor prostitutes work under pimps in big cities who are also below 18 years of age (Kaite 1995: 21). The pimps convince minors to bring more minors into the fold by providing incentives in the form of cash and kind. Children in order to earn more money and enjoy other benefits increase the number of children who engage in child prostitution. Prostituted children also engage in acts of sexual alliance with minors in order to shoot pornographic content or also as revenge mechanisms (Jokinen et. al. 2011: 89).

In recent times the occurrence of child prostitution has expanded from one continent to another in the form of child sex tourism. International prostitution has increased manifold times wherein German paedophiles are travelling to other destinations like Thailand to engage in sex with children. There are no exact figures for international sex tourism but an increasing number of prostitutes in Thailand and other destination countries point out to this kind of sex behaviour on part of Germany. Several extra-territorial persecution laws have been initiated to control such forms of prostitution, resulting in convictions but it has been very minimal (Muntarbhorn 1998: 6). Another related problem is the issue of double criminality requirement in cases where there is an inconsistency in the protected age of a child. In Germany the age of protection is 14 years whereas in Thailand it is 18. In such circumstances, the extra-territorial legislation would disqualify a crime from prosecution back home.

### *Pornography*

Paedophiles, fearing conviction and its legal implications by engaging in sexual liaisons with children, have opted for pornography as a mechanism for gratification. As per the 2017 governmental statistics, as many as 3.9 million viewers explored various websites having child pornographic content in Germany (Gorian and Back 1996: 18). The increased use and demand of pornographic material compelled the government to take

proactive steps in regulating the problem of child pornography. There are two main reasons for this compulsion. First, pornography is a catalyst to increasing data on child trafficking. Several children are trafficked for ‘filming and shooting’ purposes (Gough 1981). Second, child pornography has a far more dangerous repercussion on the child’s overall personality and bearing.

In recent years, several cases of fraud have been registered against members of online social networking sites who on several pretexts allure children to engage in criminal activities. Paedophiles and other pornography users found unconventional ways to hack software, jump security barriers on virtual mode which prompted the German government to consider ‘deletion instead of blocking’ approach to deal with the problem (Hilton and Carr 2011: 88).

Germany has the most stringent laws against child pornography among all European countries. The German criminal code restricts all forms of child and juvenile pornography. Moreover, several police units and investigation agencies have been given the task to monitor any child exploitative content online as well as offline. It was the first European country that issued notices to all ISP for their liability with regard to content circulated on the internet.

All crimes committed in respect of child pornography online are under the scrutiny of two main monitoring bodies namely the German Federal Police (BKA) and the State Police (LKA). In order to shoulder the task of monitoring the criminal activities an alternative mechanism has been devised by the German authorities. In order to create effective communication channels INHOPE member hotlines (ECO, FSM and Jugendschutz) have been set up.

Germany has seen a surge in the number of vigilance operations conducted against paedophiles. These types of operations highlight two major facts about paedophiles in Germany. First, and most obvious, paedophilia has found a place in German history and continues to exist today. Commonly perceived as sex offenders, the understanding of paedophilia in Germany is far more complex than any other European country (Collings et al. 2005). A higher degree of tolerance is clearly evident by perceiving a paedophile, as long as he/she is not convicted, as ‘a victim’ of an unconventional mind-set which is curable and controllable through treatment. Secondly, and more precisely, once a paedophile is convicted, a strong punitive action is taken against him/her (Frawley 2007). However, this is only as long as the paedophile is within the sovereign

territories of Germany. The action, approach and engagement of a paedophile in other parts of the world is not much of a concern to German state (Wolf 1997).

## **Conclusion**

This chapter began by briefly looking at German history, politics, society, culture and economy. The contemporary concern of paedophilia in Germany has its roots in the above-mentioned domestic variables. There are two contrasting schools of thought within German political community: a larger section, in which individuals and organisations raise concerns about child protection against sexual abuse, and a few among them occupy themselves in drafting judicial models for ensuring protection; and a minority among Germans who are constantly attempting to normalise adult-child sexual relations (O'Donohue and Geer 2014:12). While the former invokes a binary division between those who are concerned citizens and others who are legislative heads, the latter seeks to normalise risk within the population. In conclusion, we see that as a political community, Germany is home to different types of people having unconventional belief systems who assert demands, even if grossly unethical, in a desire to get them legally fulfilled.

Germany has created a diversified right-based mechanism to ensure that every child in Germany has access to basic entitlements. This is complementary to the analogy that by ensuring access to necessities and requirement, protection is invariably invoked as it prevents a child to purposefully opt for commercial sexual engagements. In other words, it is believed that distorted life circumstances are the only reasons that make children vulnerable to paedophile exposures (though this may not be a true and tested belief). A secured and uninterrupted access to entitlement, strong economic background and legal protection from encroachments, heavily borrowing from international and regional standards, are successful factors in shielding the child in Germany. However, this is not the only mechanism that provides a successful governance of paedophilia in the context of Germany.

In contemporary German discourses, a paedophile is not seen as a separate 'evil and monstrous category'. There is no binary division of society between morality upholders, i.e., the child, the family, the neighbourhood and the state *vis-à-vis* the morality opponents represented by paedophiles who are engaged in normalising sex with children. This is reflected by the Dunkelfeld project which provides non-convicted paedophiles with an option to confidentially work upon their liking for children. The

'don't offend' network, as it is better known, is a special treatment for paedophiles who are not under active conviction.

The heinous consequence of engaging in sexual liaisons has been curbed to a high degree among German paedophiles and German children. Nonetheless, even though German children seem to have been protected in large numbers, the question of protection of children of other nationalities is seriously questioned on the basis of the alarming increase of child trafficking statistics (ECPAT 2006). In other words, responses to paedophilia have been governed by their impact on German children but have led to an increase in the use of non-German children for sexual gratification. This can be specified in German paedophiles inclination to have sex with children not belonging to Germany or outside German borders. Despite strong extra-territorial legislations, legal implications remain toothless due to the involvement of several complexities in international jurisdictions.

The domestic framework of child protection against sexual exploitation is diverse, varied and highly divergent. Each and every aspect of child's protection against the menace caused by paedophiles has been discussed in detail. The most interesting feature of the German Law is children as witnesses in all proceedings concerning acts of sexual abuse and exploitation against them. This inclusive provision has a profound impact on children who know that their voice holds significant importance. Section 176 of CCFRG is the basis of abatement of child abuse problem in Germany. It covers all aspects of harm and ensures utmost privacy and secrecy in dealing with the victim. A deviant and differentiated method of dealing with problems of sexual abuse and exploitation is the Dunkfeld Project.

German law and its practical enactments has given it the image of being both a disciplined as well as an ideal society, premised on management of harm by expert judgments and creative choices. Within this strategy, danger is seen as governance risk, which is dealt with in a variety of ways. The understanding of childhood as a phase of innocence and risks emanating from paedophiles who are the cause of evil and dangers is challenged by looking at Germany's approach to paedophiles. New discourses are born which challenge the need-based approach towards a child and a radical target-based approach towards paedophiles. This in turn adds a new dimension to the governance of risks in the contemporary era, where individual liberties are subjugated to larger liberal discourses and administrative regulations are seen as inadequate in acting as constraints on paedophiles. Thus, a balance between moral and political

response as well as risk management is the crux of Germany's approach in dealing with paedophiles and child protection.



Fig 3.2: Political Map of Germany

Source: <http://ontheworldmap.com/germany/germany-political-map.html>

## **CHAPTER 4 – THAILAND: INADEQUACIES, SEXUAL EXPLOITATION OF CHILDREN AND EMERGING ASYMMETRIES**

### **Introduction**

The most crucial question that this chapter seeks to address is why Thailand has emerged as a paradise for paedophiles and sex predators. What are the peculiarities in Thailand that have given rise to the massive flow of people from all across the world to engage, interact and experience sex with children in this country? Unlike nations like Indonesia, Malaysia, Laos and Cambodia which, like Thailand, are also storehouses of scenic beauty, cultural experiences and other attractive features, statistics indicate that the number of tourists that visit Thailand outnumber all its neighbours. There are several adequacies as well as inadequacies in variables like history, geography, politics, economic consideration and demographic patterns of Thailand that makes it what it is.

The story of Thailand's emergence among all other Southeast Asian countries is an account of the country coming in terms with its realities and then disseminating the idea of Thailand. On the face of it, this might seem to be easy but what is Thailand and how it would look to the world stimulated the country's leaders to embark on explorations across the length and breadth of Thailand to discover and to create something that went beyond geography. It was realised that to a large extent people all across the country found a sense of collective identity rooted in the tides and turns of history, the ideals of Buddhism and patterns of sustenance and survival. The chronicles of history not only held the essence of Thailand's past but also presented the road map for the future.

Thailand's child protection policy is an amalgamation of lessons learnt from earlier historical periods and several contemporary factors. The state has attempted to create a pragmatic policy that meets international standards for child protection. Nevertheless, drafted and redrafted at different points of time, the mechanism of protection of children by Thailand is weak in terms of its implementation. This chapter broadly looks at all the indicators that give a detailed picture of Thailand's approach to children. The child protection policy in Thailand has been a product of several domestic, international and local influences. Surprisingly, in its attempt to mitigate danger by exploiters, Thailand has itself created a structure where it becomes an exploiter, unwittingly and unconsciously, of weaker powers geographically close to it.

This chapter also seeks to explore patterns of power asymmetries based on economic parameters that emerge within and between countries. There are several unconventional understandings that come to surface when we look at these relations through the prism of transnational paedophile networks. These networks redefine asymmetrical relations and exploitative interlinkages in a complex way. A multi-layered mesh is created which is detrimental to all the stakeholders involved in mitigating the problem of sexual exploitation of children. In the course of attempting to protect children from sexual exploitation, Thailand itself becomes an exploiter. The premise of foreign policy changes from peace, prosperity and other such ideals to exploitation, marginalisation and domination. Thailand emerges as a structurally authoritative nation, invisibly convincing its neighbours to send children to ensure continuity of its sex industry. Its audience changes in socio-economic terms from poor children within its economies to poor children coming from its neighbourhood. These dimensions of asymmetry add new meaning to relations between Thailand and its neighbours. Power and asymmetry then is not merely about theories and inter-relationships; it is about what a country is and what it becomes.

Most scholars agree that the approach of developing countries in focussing on an effective implementation of child's protection policy is flawed. While some have contributed this lax attitude towards children to the perverted interests of the state, others have characterised it as a problem created by the families and trusted friends of the child victims themselves. The approach of this chapter is to critically analyse normative judgments and practical implementations of Thailand's policy of child protection. In making these claims, the chapter has two broad aims. First, it seeks to postulate that policy towards children in Thailand consists of toothless enactments with impractically constructed directives. The policy does not address the actual problems faced by the child. Even though Thailand speaks in very unrestrained manner to the world outside, its susceptible population, especially children, are highly vulnerable to several threats and problems. Second, the chapter would investigate the genealogy of Thailand's past and present as it is a crucial discourse in carving out policy towards its children. The reason of rooting the construction of Thailand's policy towards children and transnational paedophile networks is to rupture all claims that attribute policy to a single cause or factor. This chapter argues that Thailand began dealing with children and its problems at a certain point of time in history to cater to needs and necessities

involving self-interests of the state. The study elaborates the discourse about political identity as a constitutive element of child policy in Thailand.

This chapter has four main sections. The first section looks at adequacies and inadequacies of Thailand from all possible parameters. It looks into the history, demography, geography, socio-cultural setting, political context and economic trends and its contribution in making Thailand an unsafe place for children. Further, it discusses the inherent shortcomings of the above-mentioned variables in protecting child rights. The second section seeks to understand the national and international approach of Thailand towards child sexual exploitation. It explores all the different prosecution mechanisms towards a paedophile, both belonging to its own nationality and those coming from outside. The third part of the chapter concludes by looking at the tripartite framework of child sex tourism, child pornography and child trafficking. It tries to explore these inter-connected mechanisms to bring out asymmetries between powers and the politics of oppression, marginalisation and subjugation within it. Finally, the last section concludes the arguments made in the chapter.

### **Adequacies and Inadequacies in Thailand: Institution, Society and Culture**

Benedict Anderson talks about a nation as an ‘imagined community’. A nation is born out of emotional and spatial constructs. Thailand, a nation with a long history enriched by different actors, events and processes has evolved over time. Thailand, earlier referred to as ‘Siam’, is more precisely recognised as ‘Kingdom of Thailand’ meaning ‘the country of Independent people’. As with its name, this kingdom of ‘independent people’ has time and again tried to reconfigure its identity to adapt to global requirements. In this section, we look at Thailand from all possible dimensions in order to understand its position in the world today and its approach to children. The fact that Thailand is the most preferred destination over all other well-known tourist spots is due to a thriving, massive and huge sex industry. There are several reasons for the existence and success of this industry.

#### *History*

History of a nation is a source of justification to its approach in the present. By examining its history, a state develops the power of reasoning to resolve present issues with a more pragmatic approach. It is in the best interest of a state to coherently connect



undercurrents of history, the moving forces at different points of time and then to believe in its own capacity to become an agent of change. Thus, understanding history is to believe in the ability of a state to act as a catalyst to change the fallacies of the present. The realist approach to IR negates a historical thesis of mankind in a narrative of progress. Realism clearly stipulates that by looking at history, 'self-interest' in the present scenario can never be constructed. History permeates forms of 'enmity among people', cultures, beliefs and ideas; it is a testimony and a validating enterprise. In contrast, the present study looks at the genealogical approach of Thailand towards its people in the past to validate its laws in the contemporary scenario. By looking across places and ages, we link the progress of state in articulation of norms towards events that occur repeatedly.

Thailand has a long vivid history of more than 5000 years witnessing situations that had positive as well as negative implication on its evolution (Baker and Phongpaichit 2005). It comprises periods of imagination, construction, and destruction of social as well as political identities. Thailand has witnessed a marked presence of indigenous people, the French and British colonisers, monarchs, revolutionists coupled with military leaders (Lysa 1998: 115). It has evolved over time with a sense of cultural pride, a history of struggle and a differently marked out character (Walvin 1978). The Thai way of doing things is naturally governed by its experiences learnt during its course of social evolution. Its approach to its people is topped with humanitarian virtues specific to Thai civilisation (Ward and Hardy 1986). The rhetorical nature of Thailand's policy towards children is a mere extension and expression of the Thai self.

The history of sexual exploitation of women and children in Thailand dates back to several centuries (Lysa 1998). However, the pervasive nature of child sex industry is a characteristic of present day Thailand (Boonchalaski and Guest 1998). Several forms of paedophile relations had operated in the indigenous setups of Thai families. Adult Thai men married, maintained and supported minor girls and also used them as mistresses (Wilson and Henley 1994: 16). These forms of formalised relationships were used to engage in sexual relations and gratify unconventional sexual desires. Boonchalaski and Guest (1998) have hinted at several other forms of sexual engagements in Thailand. The Ayutthaya period, or the period of the fourteenth and fifteenth centuries, witnessed legal and government regulated sexual exchanges in Thailand (Walvin 1978). In this period, children, mostly Chinese, offered their bodies

to Thai and other migrants in return for sexual pleasure and sexual explorations (Ward and Hardy 1986). Thus, what began as an activity of leisure by Chinese became an igniting factor among Thai children to engage and benefit, both in terms of pleasure and economic viability.

Child prostitution was prevalent in Thailand throughout the eighteenth, nineteenth and twentieth centuries. In the latter half of nineteenth century and for quite a long period of time in the twentieth century, Thailand faced political instability with absolute monarchy being transformed into constitutional monarchy (Montgomery 2001). This change ushered in the era of European way of life and the inherent conservative methods of interaction were questioned. There were several reforms that protected children from being exploited at the hands of adults, abolishing child labour laws and end of child prostitution (Vella and Becberel 1995). The question of children was brought to mainstream policy circles and revised under the influence of democratic ideals. Thus, the state made attempts to cut traditional practices from influencing children and unknowingly pushing them towards commercially sexually exploitative relationships (Lysa 1998: 66).

### *Geographical*

Located in Southeast Asia, expanding over an area of 513,120 square kilometres, Thailand's policy towards its people is also influenced by the limits and strengths of geography. Unlike other peninsular countries, which had a history of stability removed from external influences, Thailand has been time and again explored by several nations (Li 2000: 869). Thailand, placed in the southern tip of Southeast Asia, is surrounded by Laos and Cambodia in the east, Myanmar in the north and west and Malaysia in the south. All these small countries share in common a story of deprivation (Shaw and William 1994). In this regard, they have pursued various economic and social policies to ensure cooperation and mutual benefit. ASEAN was a result this resource- and burden-sharing model.

The topographical profile of Thailand comprises of four main areas: the hills in the west, northern uplands, the plateaux in the north-east and the lowlands of the south. This topographical placement of Thailand makes it most favourable for tourism (Li 2000: 874). The lowlands in central Thailand have an abundance of historical and cultural heritage. The northern hills are a location of adventure tourism with several

national parks, forests and sanctuaries. The coasts in Thailand are full of beaches which become centres of sex tourism. The weather conditions in Thailand are typically dominated by tropical monsoon. Thailand has heavy rainfall from June to October. During these months economically weaker sections in Thailand do not have a source of good and stable income (Li 2000: 881). In winter months from November to March, Thailand is a tourist heaven. People from all across the world visit Thailand for different purposes. April to mid-June is hot and humid, making it less attractive for people. This geographical condition in Thailand makes it consider several factors over other in giving importance to tourism as a source of income.

Even though Thailand has high reserves of natural resources it has limited availability of subsistence resources. Seafood and rice are staple Thai food sources and all other means of sustenance are procured through import. The geographical diversity makes it really attractive for tourists who seek to explore the landscapes and beaches in Thailand (Towner 1996). The four main tourist destinations of Thailand are Phuket, Bangkok, Chiang Mai and Pattaya, interconnecting with several other island and destinations (ECPAT 2007). The geographical placement, infrastructure and attractive landscapes attract several people to these places from all around the world (Li 2000: 868). Despite availability of all forms of food, the distribution mechanism in Thailand is extremely weak making some sections in society starve and fight extreme weather conditions. In search of better geographical resources and survival, people move from one region to another. Several local people find sources of income by using ethical as well unethical means (Sinclair and Stabler 1991). Thus, these features of Thailand's geography become advantageous as well as disadvantageous for its citizens, especially children.

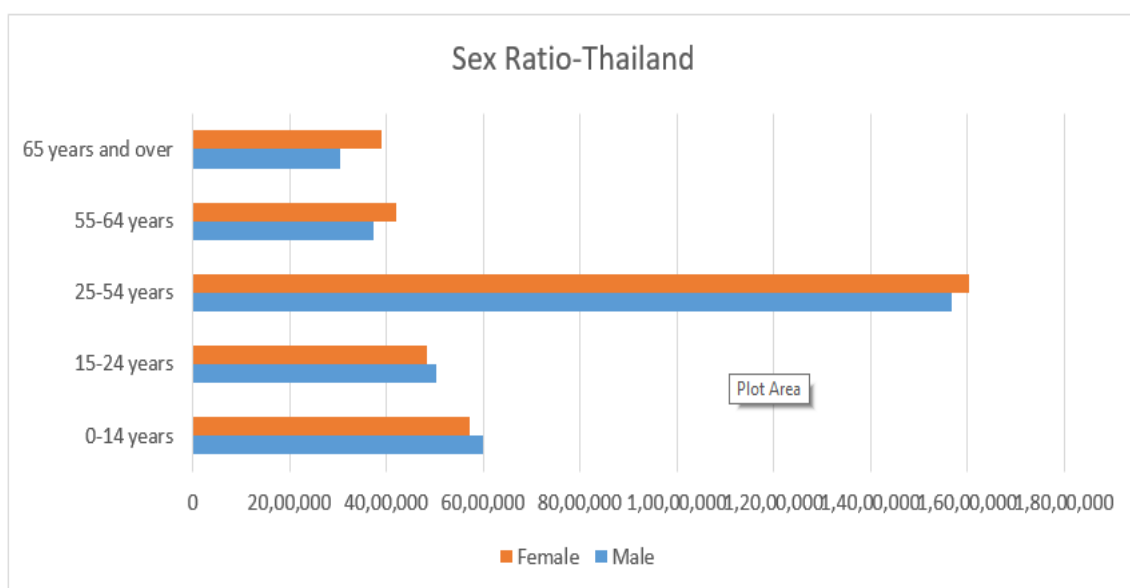
### *Demography*

The demographic statistics of Thailand are testimony to the role the state has played in improving or sub-standardising the condition of its people. The demographical attributes heavily influence child protection policy of Thailand and its approach to paedophiles. The quality of Thai life, its population, sex ratio, labour indices and literacy rates determine both the role that Thailand has already played and needs to play in order to curb the menace of sexual exploitation faced by its children. These patterns alter with changes in demography. Also, it is not necessary that qualitatively and quantitatively good demographic statistics will ensure similar effects on child safety and

security (ECPAT 2007). State and markets react to these demographical changes and most importantly also shape them. The data on demographic indicators is a key in determining the Thai state's child protection policy.

There are several limitations in collection of data but the Thai government makes immense effort in trying to bring out the real problem faced by children in Thailand. With an estimated population of 68 million on 1 January 2017, Thailand has witnessed an increase of 0.38 % in its population as compared to 2016 as per National Statistical Office (NSO) 2017. This significant increase in its population also increases the vulnerability of children as large part of society is still below 18 years of age (NSO 2016).

The figure below shows girls are more in Thailand as compared to boys. This leads to a social conditioning among people where women are considered as primary caregivers.



**Fig. 4.1: Sex Ratio in Thailand at different age groups**

Source: National Statistical Office, Thailand

The sex ratio in Thailand is 0.966 i.e. on every 1000 females there are 966 males. This discrepant ratio is also visible in the sex ratio of children in Thailand. In comparison to every 1000 girls there are 980 boys (NSO 2016). Thus, a remarkable aspect of Thailand's population is that there are more females than males in the country. Women are considered the primary caretakers of the family. Does this then become the cause of increased role played by women in Thai sex industry?

As of the beginning of 2017, Thailand's population age distribution shows that there is a considerably small section in society who are above 65 years of age, with only 9.2% of people in this category. The majority of the population (70.9%) is between 15-64 years which makes it a bigger responsibility on part of state to provide employment to its people. Coupled with this statistic is the dependency ratio which is 41% in Thailand. Also, the child dependency ratio which refers to the number of children below 15 years working in the country is 28% (Ministry of Labour and Social Welfare 2016). Thus, the asymmetrical sex ratio where the male is dependent upon the female for survival and high dependence on children Thailand experiences alarming rates of children participating in the sex industry.

Thailand has worked really hard since 1991 to improve the conditions of the child which have a direct relevance on child protection against sexual exploitation. As per the data released by NSO 2016, the number of children educated in Thailand has surpassed all earlier records both within Thailand and when compared to surrounding countries. 90% of Thai children are going to schools (NSO 2016). Primary school, middle school or higher education enrollment numbers have been increasing. Increased literacy rates will surely reduce the attraction of children towards sex industry as a means of living (NSO 2016). However, the quality of education is sub-standard and with increasing global exchanges education needs to cater to professional as well as academic growth in Thailand. Also, according to ECPAT there are considerable number of children who drops out from after primary or secondary school.

Poverty has dropped from 8.5% in 2007 to 6% in 2016, the number of children in poor households also reduced to 2 million as against 3 million in 2007 (NSO 2016). Yet, these figures have not been able to mitigate the recuperative effects of children's security in Thai society. More than 12% of children are malnourished, deprived of basic necessities and facing high levels of insecurities as they are migrants and, in many cases, unregistered (NSO 2016). Children find no alternative means of self-survival but to come to urban pockets like Pattaya, Phuket, Bangkok and Chiang Mai where they are absorbed into the flesh trade. Seeing money as a big incentive, children tend to believe that sex is the easiest and fastest way to procure money. In 2015, approximately 30% of children were not living with their parents but on streets and with brothel owners, etc. (UNICEF 2016).

Health is another indicator of the situation of children in Thailand. It is estimated that 4,50,000 children in 2016 had HIV/AIDS in Thailand (WHO 2017). In 2015, more than 16.3% children face malnutrition and 23.1% children live in poorest of the poor situation (UNICEF 2016). Another emerging problem in Thailand faced by children is teen pregnancy. Thus, all these demographic factors coupled with socio-cultural and economic indicators make the situation of children in Thailand far more vulnerable.

### *Socio-Cultural Setting*

Thailand, submerged between postcolonial settings and its traditional homogenous cultural system has to incorporate, ‘the universal characteristics of the nation-state which arise from the functional requirement of being a member of the nation-state system and the particular character of each nation as it reflects its culture and social history’ (Pyett and Warr 1997). Thailand, in the process of adopting newer cultural beliefs within the universal nation-state setting, tends to compromise with its earlier ideas and traditions (Bishop and Robinson 1998). The Thai state has little recognised that the liberal approach to children, both by domestic and transnational paedophiles is a part and parcel of its culture and tradition. Buddhism is the major religion followed in the country with more than 94% of the population being Theravada Buddhist (NSO 2015). This religious legacy gives to its people three very crucial life paths: i) piety as an integral way of life, ii) unconditional support and obligation towards elders, especially parents and iii) theory of Karma and merit-making. Though Buddhism does not support child prostitution as a way of life, these three life paths are a priority for Thai people, to be pursued even if it involves immoral and unethical ways to uphold them.

The first aspect of culture; piety has been discussed by Taylor. He states that children are sent to work in Thai brothels to earn for their parents who believe that, ‘commercial sex work in Thailand does not typically involve streetwalking, beatings by pimps, or scuffling with deviant customers, nor does most involve trafficking’ (Taylor 2005: 416). Thus, according to Buddhist principles, placing piety above any task is great when the end result is the survival of family (Taylor 2005).

The second aspect of obligation towards parent has been discussed by several scholars. Montgomery (1998) says that children born in poor background religiously socialise with a mindset that invokes ‘filial duty’. In this approach, ‘issues such as loyalty and

private morality determine some children's social actions (O'Connell 2005: 81). In such cases, the child works hard to bring high-incomes, better living conditions and an improved lifestyle for his/her parent. Thus, it is not poverty that influences children to choose sex over other means of survival, it is 'filial duty' that motivates them (O'Connell and Taylor 1996). Moreover, in the age of consumerism, children have realised that the quickest way to provide better living conditions for parents is by engaging in sex (Ryan 1996).

The third way of life is the theory of karma and merit-making (Levy 1988). As per this theory of karma, if a Thai Buddhist performs his/her life actions with utmost faith and sincerity then the progress in life by accumulation of merits will certainly take place. Good deeds are defined by the course of life one chooses in order to provide basic requirements for his/her family (Williams 2000: 23). This is a source of major influence on the minds of the children living in Northern Thailand, where people are spiritually ordained and believe in Buddhism as a way of life (Boonchalaski and Guest 1998). Another reason for the increased acceptability among children of Northern Thailand to engage in prostitution is because of the lesser importance given to virginity in these areas (IOM 2001). However, in the southern region of Thailand which has high number of Muslims, female virginity is highly valued (Ahmed 2000: 25). This is rooted in the belief that children must be protected from exposure to prostitution which is considered as 'evil and sick' (Altman 2000).

Thai culture has a heavy bearing on the thriving child sex industry. Some Thai scholars and common people are passive to issues like child prostitution and other forms of sexual exposures of their children. Confucianism has found a deep bearing in Thai culture and modes of interaction (Arnold and Bertone 2002). Montgomery (2009) draws a contrast between the two concepts of 'moral creditors' and 'moral debtors' in explaining the increased importance of child prostitution in Thailand. The parents on the one hand act as 'moral creditors' who invest in children by giving birth to them and rearing them over a period of time. On the other hand, children are 'moral debtors' who are expected to repay these obligations by following all instructions of elders. Thus, in several cases this culture of parental obligation, ethics and morality within family are used as tools to encourage children to opt for prostitution as a way of income. The Thai culture is in sharp contrast to religious beliefs and ideas prevalent in the west. Despite several attempts to separate culture from child prostitution by creating universal

standards of consideration the Thai culture seems to be very rigid in its interpretation of child rights, duties and their involvement in prostitution.

### *Politics*

Politics is about power, the ability of state to domestically protect and provide resources to its people and internationally protect its image as a friendly and approachable nation. In the mainstream Western discourse on state, power has been defined in material terms, where a state engages in building strategic motives by ensuring ethical as well as moral postures. This mainstream understanding of state capabilities and its replica in Thailand highlights a subversive and more multifarious understanding of state capability (Cole 2007: 950). Thailand has been a monarchy which considered the ability to inflict violence as a measure of power. To several monarchs the legitimate use of force and power was the only way to contain people. Thus, policy of Thailand towards children began merely as the least important field of play where strategies were planned just for the sake of it. The concept of rights in general and child rights in particular was self-constitutive and an enunciation of based on self-determined initiative (Jeffrey 2002: 71).

Earlier known as 'Siam' (a designation by Portuguese) and the 'Xianluo' (a name given by Chinese) it is now known as 'Kingdom of Thailand'. 1932 till the present is a time period relevant to the study, the approach towards its people is an indicator of its stakes and claims in recognising needs of children in today's Thailand (Jeffrey 2002). In 1932, under the negative rubrics of colonialism and absolute monarchy, people initiated the Siamese Revolution to establish a pro-people's government by overthrowing constitutional monarchy (Pettman 1997). However, it was an unstable period with the government constantly rippling with rivalry between the nationalists and the military. In this period, the concerns of children were side-lined and priorities on nations transition was the focus of governments concern.

It was in 1946 that the first democratic election took place in Thailand after a long period of civil unrest and rebellion. Although it was decided that Thailand would be a constitutional democracy it has witnessed periods of military rule over all these years. Till the 1980s concern of children was not given due importance. It was in the 1980s with a democratically elected government that concerns of children and the problems they were facing became important consideration of the state (Cole 2007: 953). In 2006



Junta revolution, the military regime regained power to reject the visions and projects enshrined in constitution. Time and again between 2008-2010 and 2013-2014, Thailand has witnessed situations of political, economic and social crisis. In each of these periods, liberal discourses have been overridden by the military dictatorship. In 2014, post the military coup the older Thailand constitution was disbanded and the way ahead has made space for military generals to become Prime Minister of Thailand, through elections. These periods of history reinvigorate new understandings about the approach of Thai state towards its people, its development in economic and other terms, etc.

The policies drawn by government has a huge bearing on children and the risk of paedophiles engaging with them (Ennew 1986). Due to constant instability in the political arena the state is unable to provide higher education (Melrose et al. 1999) and alternative source of income, making sex-industry a lucrative employment opportunity for its people. Parent and children are lured into these mechanisms by domestic recruiters by using fraudulent justifications. Several Thai politicians, administrative and legal officers and domestic paedophiles are involved in the continued operation of these industries to gain their share of benefits (Brown 2001). The guarantee of social welfare schemes helps in providing a safety net for children and prevents them from engaging in prostitution. However, the Thai government has on several occasions recreated macro-economic policies that aim at reduction in social welfare expenditure and an increased stress on tourism (O'Connell 1996) as a means to generate revenue (Valentine 2004), whereas the guarantee of social welfare schemes helps in providing a safety net for children and prevents them from engaging in prostitution. Therefore, political moves such as reduction in social spending has led to a multi-fold increase in a kind of tourism industry that attracts children to earn by providing sex service to tourists (UNWTO 2003).

### *Economy of Thailand*

The market indicators of a country resonate several things about a country's policy. Thailand has a far more stable economic situation as compared to other countries in the region. Despite this, Thailand has failed to prioritise children over market necessities and requirements. The capacity of any state to articulate protective mechanism for its citizens is based on its capability. In defining the capability of Thailand in articulating a paradigm and mechanism for child protection, several determining factors are

articulated (Irrawady 2015). Economy is one of the most important assets of a country because everything in the world today is heavily driven by capital. Thailand is a fast-developing economy and is perceived as an upper-middle income economy by International Monetary Fund (IMF) and World Bank (WB). The Human Development Index (HDI) ranks Thailand at 87<sup>th</sup> position in global order which is a fairly decent ranking when compared to other developing economies (UNDP 2016). The logic of international political economy is largely guided by accumulation of capital and wealth in form of money (Thomas 2000). Today, developing countries have taken a tough stand to control illicit demands from developed economies. However, despite a strong international regime the people in Thailand, belonging to economically weaker pockets do not combat the sexual exploitation as it fosters growth of money and capital (Richardson 2004: 92).

Thailand is a late entrant to the international capitalistic economic setup. It had to plug itself into the world economy largely dominated by Western models. The state has revamped its economic basis since 1932 and stands at a GDP of 11.375 trillion baht in 2016 (NESDB 2017). In the recent years, Thai economy has grown by 7% as against earlier growth rate of 4-6% in 2013. In order to place itself in the world capitalist economy, Thailand has based its economic built up on six main sectors namely: industrial sector, tourism and hospitality sector, agricultural sector, construction and mining sector, education sector and telecommunication and service sector (Sinclair and Vokes 1993). The share of each of these sectors in 2016 was varied and has been almost consistent in the last five years. The first two sectors together accounted for 53% of GDP contributing the largest share to Thailand's GDP, the agricultural sector is a little higher at 11% than mining and construction which contributes as low as 5% to the Thailand GDP. The education sector makes a 10% contribution to the Thai GDP. Finally, the telecommunication and service sector, a recent provider contributes 21% to the GDP of Thailand (ECPAT 2010). Does this economic benefit have no implication for Thailand child protection policy? How is it that children still suffer at hands of transnational paedophiles?

This standing testimony of success and growth gets severely nuanced when the statistics on poverty is scrutinised. Despite having an excellent growth rate and a position of pre-eminence among its neighbouring countries, Thailand has not been able to do much for its own people. It has very low Gross National Income (GNI) and severe poverty levels.

Thailand's 'free market' policy has motivated accumulation of money through illegal means. Child labour in Thailand is the highest in the world, with 8 million children in the Thai labour workforce (Elliot et. al. 1995). Thus, child sexual exploitation is a major source of income to Thai economy and it is tough for state to do away with it.

The growth of the Thai economy has led to a model of dependency among neighbouring Southeast Asian countries which is 'neo-realism of the South' (Paulus 1997). This is also visible in the attitude of lower-income economies like Laos, Cambodia and Vietnam. In contrast to all these economies, Thailand is the second-largest economy in the region after Indonesia. Its international reserves are compared with Singapore and it ranks at a very good position in volume of external trade. Thailand becomes the transit point for all these economies. Even though the problem of Thai children's protection has been dealt with to a large extent, it becomes a destination for these countries to sell and engage in sexual exploitative situations.

Thus, the above factors suggest that Thailand's approach to its children is guided by several factors. Historically, Thailand has been a country with altering political stances riddled with several internal limitations. Any newly born nation has aspirations to project itself as a great nation in the international world order. At the same time, it encounters several domestic challenges and the newly independent country witness's confusion, turmoil and a state of disparity. The problem emerges when Euro-centric beliefs are imposed on these 'becoming' states. The first few years of Thailand's transition to a fully independent state saw leaders with lack of knowledge about global politics. They had different set of priorities and problems to deal with. They were absorbed in understanding the immediate domestic requirements, bridge the gap between monarch and effective democracy etc. In order to ensure all this, leaders chose the most pressing requirement, which was development. Thus, the transition from a quasi-colony to a strong nation state in consonance with global structural imperatives was full of struggle, making children and their problems a matter of far less priority.

The policy of a country is driven by the needs and necessities of its population. Mainstream approaches to international relations conceive national interest as the core motive of a state in adopting one policy over another. This approach is also evident when defining the parameters of child protection norms in Thailand, which has made all attempts to put its conventions, treaties, legal enactments and provisions in place in

order to ensure a strong mechanism of child protection. However, in the realm of an international political economy it is market and its compelling incentives that compel the state to list its priorities. Seen from this perspective, implementation of child protection laws in Thailand remains weak. The attitude towards children does not merely remain an agenda of national interest by way of sufficing to its economic necessities and requirements and creating a model in which state is compelled to focus on to other agendas and seek benefits.

### **National and International Legal Mechanisms of Thailand**

The identity of a child in Thailand is chiefly characterised as ‘any individual below the age of 18’ and this parameter is widely accepted in policy circles. Thailand has not employed this conception of identity on the basis of domestic variables alone. It focusses on the external factors in drafting its approach to a child, emanating from international debates. However, for involvement of people in labour, Thailand recognises ‘a child as anyone below the age of 18’. There is no clear discourse on childhood in Thailand and whatever is, is deeply rooted in its cultural belief and traditional notions on role of a child. Childhood in Thailand is a golden period in an individual’s life, when children study, enjoy leisure activities and learn unconventional art of earning money (Li 2000). This understanding has two implicit nuances that clearly highlights the hypocrisy in looking at childhood. First, this understanding of childhood as golden period suggests that Thai children coming from poor family backgrounds use childhood as a means of earning more money. Child prostitutes are in high demand especially by paedophiles who travel borders in search of sexual gratification with a child. Second, even though engaging in sex and earning money is the capability and task of an adult, there is no fixed age boundary to define adulthood in case of children belonging to financially weaker families.

Legal mechanisms have been drafted, incorporated and designed to show Thailand’s unshakeable commitment in stopping trafficking of children for sexual purposes. In 2007, the Thai Government passed the anti-trafficking legislation which ‘prohibited all forms of trafficking in person’. It was a comprehensive legislation incorporating forced labour trafficking within its fold. The penal provisions were commensurate with all other forms of grave crimes and aimed at punishing the offender. In 2015, Thailand became a signatory of the ASEAN Convention Against Trafficking in Persons,

Especially Women and Children, which aimed at reducing all forms of trafficking for sexual purposes as a regional initiative.

Despite all these provisions, Thailand is among the top three countries globally on child trafficking. Its legal mechanisms and other initiatives have remained on paper with very limited application in true sense and spirit. Thailand has not created any advocacy group at the grassroots level. The NGOs engaged in this task are international bodies with a set of ulterior motives that do not engage in meaningful changes. Thus, in order to bring a change Thailand has to stop succumbing to the benefits that paedophilia offers to the Thai economy and provide alternate modes of survival and sustenance for children to prevent them from engaging in sex-for-money activities.

All developing countries construct their child protection policies based upon their understanding of how several forces and factors mutually intersect. This thesis has already argued that domestic variables have a huge influence on Thailand's child protection policy. By taking this as the basic premise, let us examine the endeavours of the Thai state to deal with the problem of paedophiles, both from within the country and those coming from outside. Thailand has attempted to create a strong legal mechanism to deal with the problems faced by the child within its borders. The citizens of Thailand have been subjected to several rules and regulations which undergo frequent changes due to constant political instability. This ever-changing nature of Thai laws could be one of the chief reasons why Thailand is unable to effectively protect its children, both from external as well as internal threats.

The 2017 Constitution lays down the road map for drafting laws and policies for governing the rights for Thailand's people for effective administration. In Thailand, every few years the Constitution is altered to suit the political needs and the road map for drafting child policy also gets revamped. This is a source of extreme confusion. This study has therefore opted to treat the Constitution of the Kingdom of Thailand 2007 as the referral basis. In the Constitution of 2007, for the first-time civil society was constitutionally called to participate in policy-making processes. Significantly, the Constitution addressed the issue of violation of children's rights by immediately enforcing the provisions without requirement of organic law. Several provisions are enshrined in Chapter III of the Thai Constitution that contains rights which are

applicable to children and also to other citizens. However, very few child specific provisions are found in the Constitution.

Even though the draft Constitution of 2014 and other earlier Constitutions had provisions pertaining to Thailand's child policy, we will not be examining them as a part of this study. The 2017 Constitution mandates that the state has unilateral power to adopt any possible 'measures in order to eliminate an obstacle to or to promote person's ability to exercise their rights or liberties on the same basis as other person or to protect or facilitate children, women, the elderly, persons with disabilities or underprivileged persons' in furtherance none of these 'shall not be deemed as unjust discrimination' as long as it protects the vulnerable section in the society (Section 30). This gives the sole power to the Thai government to alter the problems faced by children in Thailand. Section 40 of the Constitution specifically provides that 'children, youth, females, the handicapped and permanently infirm' shall be protected during criminal procedure in case of sexual violence.' Section 52 of the Constitution provides a general mandate for the state to protect 'children, youth, women and family members...against violence and unfair treatment' and requires that children and youth who have no custody should be raised and provided with welfare by the state. Therefore, right of child to get protection and care has been provided in the Constitution itself.

Right to Education is also enshrined in the Thai Constitution. Section 49 of the Constitution stipulates that all children, including those who are 'indigent, disabled or handicapped, or destitute', are entitled to free and equal education till 12 years of age. Section 80 of the Constitution also puts obligation on that the State that it shall carry out the Policy Directive on Social, Public Health, Education, and culture in order to protect children and develop education at the primary level. However, despite the free and compulsory education for children, they remain vulnerable commercial sexual exploitation.

These core assumptions had been reflected in some manner or the other in all the changing constitutions of Thailand since the 1930s. Though there are some procedural alterations from the 1930s till date, all the drafted constitutions have time and again recognised the important position that the state plays in protecting children from vulnerabilities. Keeping this in mind, the Thai state has made several attempts to create effective child protection policies, in order to eliminate all forms of sexually

exploitative mechanisms within its territory. This section seeks to critically analyse these actions of the Thai Government. In order to devise strong mechanisms to protect children, both the Thai Penal Code as well as the Thai Criminal Code have envisioned several schemes and policies to prevent children from engaging in selling sex or becoming objects of sexual pleasure. While it appears that there is a serious lack of a comprehensive framework dealing with the problems of abuse of child rights in Thailand, there are nevertheless several enacted legislations, national plans and consolidated policies that focus on child protection.

The first and foremost endeavour of Thailand was Contagious Disease Prevention Act, 1908 when it realised that brothels were the locales of child sex selling. The Act made attempts to revisit registration of brothels and stated that ‘if a prostitute registered herself, she would be allowed to conduct business in the sex trade’.

Heralding the first systematic approach to children and their policy of protection, Thailand, as early as 1928 investigated and listed those areas which were violating the child’s security. The two main areas focusing on the exploitative dimension in child protection mechanism was pornography and abuses linked to child trafficking. The Thai state immediately drafted, the Sale of Women and Children Act, B.E. 2471 (1928) and the Pornography Act, B.E. 2471 (1928). These two Acts clearly elucidated how perceptions of a child were constructed by wielding a sexual discourse around the child. The dangers emanating from both exchange and trafficking were enormous and brought to light the existence of ‘dangerous other’. Thailand, then recognised as Siam, devised a strong legal framework in 1936 for protection of children as moral panic began to surmount at all international debates on trafficking and molestation (Sandfort and Rademakers 2000: 15).

In understanding of child protection, Thailand identifies ‘position’ as a crucial indicator of problems. There are clearly demarcated positions, areas and places that transgress situations of vulnerability. The Thai state, recognising this situation, formed several laws to identify them and scrutinise the perpetrators. The Hotel Act, 1928 and the Entertainment Place Act, 1966 makes certain acts in some areas within Thailand criminally liable. However, this act stands nullified ever since Thailand made prostitution legal. Child prostitution has remained illegal. Nevertheless, these Acts still seems to have relevance for child protection. Places like bars, brothels, hotels and

resorts become the major locations where children are exhibited. Thus, location helps in acquiring knowledge about the point of operation of paedophile networks.

The Thai Penal Code B.E. 2499 (1956) is the primary statute which provides for punishments for paedophiles within Thailand. There are several provisions in the Code that discuss the criminality of engaging in sexual relations with the child. Title IX of the Code is about laws relating to offences based on sexuality in general. Section 277, 278, 283, 285 and 287 talks specifically about the sexual exploitation of children in Thailand. Section 277 which states that ‘Whoever, has sexual intercourse with a girl not yet over fifteen years of age and not being his own wife, whether such girl shall consent or not, shall be punished with imprisonment of four to twenty years and fined of eight thousand to forty thousand Baht’. It further goes on to say that if the sexual act is ‘committed against a girl not yet over thirteen years of age, the offender shall be punished with imprisonment of seven to twenty years and fined of fourteen thousand to forty thousand Baht, or imprisonment for life’ (TPC 1987). However, all offences in this part are in reference to crime committed against a girl or a female. It fails to address the issue of exploitation of young boys by paedophiles. The Thai Criminal Code empowers the Courts of Thailand with the jurisdiction to try the violators of a child’s integrity, both within the Kingdom of Thailand and outside. Several amendments are made to the Penal and Criminal Procedure Code in the subsequent year incorporating stricter provisions against violators. From looking at customer as a victim to incorporating victim as a violator, laws have altered to add substance to the existing framework and provisions. However, despite strict punitive measures, violation of sexual integrity of a child continued to exist.

With the rising statistical records on child sexual exploitation, the legal approach of Thailand towards its children had to distance itself from the ‘dangerous other’. The idea of constructing a child policy considering children as the core of its agenda was emanated by passing the Prohibition of Prostitution Act, B.E. 2503 (1960). The term prostitution or more precisely ‘child prostitution’ as mentioned in the act projected the existence of an entity, children who were sexually exploited by the other, a paedophile; and could only be dealt by an organised, specialised, and legal policy. It was clearly mentioned that engaging with all forms of prostitution was illegal. However, the Act had a very crucial inherent limitation, as it gave several exceptions to the ‘customer’, thereby giving a free-hand to the person involved in sex with children.



In order to negate the belief that ‘customers’ are not found guilty in child prostitution as given under the Prohibition of Child Prostitution Act 1960, Thailand drafted the Statutory Rape Law when the mainstream analysis indicated that child prostitution was an exploitative mechanism based on demand and supply chains. Unlike the earlier Act, the Statutory rape law finds the customer as the assessor of needs, emanating demands for self-satisfaction and thus considered to be equally guilty. Under this law, having sex with a ‘girl or boy below the age of fifteen’ surmounts to statutory rape. The state takes punitive action against the guilty and is subjected to an imprisonment for 7-27 years or a fine amounting 160\$-1600\$. The inherent weakness of this law clearly lie in its implementation. Firstly, even after being caught a paedophile might not be subject to this law as it deals with people in general and not children in particular. Secondly, the intermediaries are the ones who are convicted and easily released due to domestic contacts and local connections. Thus, the lack of a genuine legal definition of the paedophile as a perpetrator becomes a site of power contestation where the actual guilty is let go.

The Thai Prostitution and Suppression Act (1996), makes child prostitution illegal which was repealed in 1997 and prostitution in Thailand was made legal. But it ensured strict enactment of this Act and the Thai laws were strengthened as the punishments for those caught engaging in sex with a minor got substantially increased. Under the Act, the penalties for customers, procurers, brothel owners, those who force children into prostitution, and parents vary depending upon their role and involvement. In the face of the ineffectiveness of the above legislations and failure to address the different aspects of child exploitation, Thailand, under the pressure of international obligations, took desperate steps and brought about various legislative changes relating to child rights and development in the 1990s. As a result, the laws relating to child rights and protection have been scattered in various legislations.

Since 2000, Thailand coupled legal enactments with several administrative and societal reforms to ensure the reduction of statistics on sexual exploitation among children. There were some serious efforts to combat trafficking and prostitution by the Kings of Siam during the first two decades of the twentieth century. Leaders made serious attempts at addressing the problems faced by girls and boys in Thailand which have however had very limited impact in terms of dealing with this menace.

It was with the Trafficking in Person Report, 2001 that governments realised that its endeavours to ensure and suppress human trafficking was not working and non-compliance of standards was witnessed with continuous unreported cases. This prompted the leader Chuan Leekpai to begin a series of reform in the country to ensure improvement in situation of children in Thailand. He tried to announce a nationwide crackdown on child and forced prostitution and clamping down on government corruption through brothel raids. Moreover, he also asked Thai police to pay more attention and take accountability for trafficking cases in their prospective areas, so less women and children would be victimised. Several rural Thai families were persuaded not to sell their daughters into the sex trade and the Thai government signed an MOU with the Burmese government as several girls and boys were trafficked from there.

Banharn Silaparcha was the leader of the Thai Nation Party and came to power when Thailand was going through acute economic crisis. The value of Baht lost more than half of its value. Asian Financial Crisis that led the stock market to crash and this made children take up jobs in whichever sector they could and this made the situation of women worse. The Penal Code Amendment Act, 1997 was created which ensured strict punishment of law violators. As a major step ahead, he started a movement that educated women and children not to engage in prostitution as it had serious adverse consequences on their health.

The government also founded the Centre for Protection of Children and Women as a special wing of the Royal Thai Police in 1998. This created special benefits to the sexually abused children and sex education was made as a part of training of all police officers so as to sensitise them to the needs of children. Silaparcha also entered into the process of signing treaties with several countries so as to join hands and work on common guidelines to ensure better implementation of strategies. This also prompted the government to provide non-Thai victims with basic necessities and facilities, although it regarded all non-Thais as illegal migrants.

The Child Protection Act of 2003 (CPA) embodies one of the most remarkable efforts of the government of Thailand by which it recognises the special position of children in the society. CPA defines the term 'torture' to mean 'any commission or omission of acts which cause the deprivation of freedom of, or mental or physical harm to, a child; sexual abuses committed against a child; inducement of a child to act or behave in a

manner (...) unlawful or immoral, regardless of the child's consent'. The terms torture intends to include all ambits of sexual exploitation of children. Section 26 provides that irrespective of a child's consent, one is prohibited to 'force, threaten, induce, encourage, consent to, (...) act in any way that results in the exploitation of a child' and it also prevents the 'use, employ or ask a child to work or act in such a way that might be physically or mentally harmful to the child, affect the child's growth or hinder the child's development'. Therefore, the most noteworthy outcome of this Act is that even the paedophiles can be criminally held liable under the criteria laid down in this Act.

Thailand has time and again devised policies for protecting its children through education. The Compulsory Education Act, 2002 envisions education as a smooth way it spreading awareness among children about their potential, this was also extended to differently abled sections by the Persons with Disabilities' Quality of Life Promotion Act 2007. Education is the seat of awareness and helps the child in understanding that there are alternative forms of survival and sustenance. In this regard, education was entwined with the National Child and Youth Development Promotion Act 2007 and the Promotion of Non-Formal Education and Informal Education Act 2008 both of which attempted to disseminate the idea of sex as a viable way of living. Thus, Thailand made an attempted to educate children and provide them tools to secure alternative means of sustenance.

Like majority of the developing countries, Thailand also faces the social problem of Domestic violence. Since Government was not able to resolve the issue by normal civil and criminal laws, it passed a special enactment of the Domestic Violence Victim Protection Act of B.E. 2550 (2007) (DV Act). The DV Act not only protects the victims of domestic violence, but it also provides mechanism to punish the offenders.

Even though the CPA's objective was to promote the protection of children but it could not address some serious issues such as trafficking faced by children in Thailand. CPA failed to provide for an appropriate punishment for such offences, therefore, the requirement of Anti-Trafficking Act 2008 was felt. This Act focus on issue of trafficking and address the issue in effective manner. The Labour Protection Act prohibits the employment of children below 15 years of age but permits employment of children between the ages of 15 to 18 in 'light work'. The Act codifies the worst forms of child labour.

<b>Table 4.1: Penalties relating to sex offences and crime against children</b>		
<b>Age of the child</b>	<b>Type of sexual offence/crime</b>	<b>Crime Penalties Regarding Sex Offence and Crime</b>
Under 15 yrs.	Sexual Intercourse	4 –20 yrs. imprisonment, fine of 8,000-40,000 baht 10 yrs. imprisonment, fine of 20,000 baht, or both
Under 18 yrs.	Indecent Act	5 yrs. imprisonment, fine of 10,000 baht, or both
Penalties relating to prostitution:		
Age of the sex worker	Penalties imposed on	Crime penalty
Under 15 yrs. 15 – 18 yrs.	Sex exploiter (customer)	2 –6 yrs. Imprisonment 1-3 yrs. imprisonment and a 20,000-60,000 baht
Under 15 yrs. 15 – 18 yrs.	Procurer or trafficker who procures, seduces, traffics another person for prostitution	10-15 yrs. imprisonment, and 200-400,000 baht fine 5-15 yrs. of imprisonment and 100-300,000 baht fine
Under 15 yrs. 15 – 18 yrs.	Venue Owner(s)	10-20 yrs. imprisonment and 200-400,000 baht fine 5-15 yrs. imprisonment and a 100-300,000 baht fine
	Parents	4-20 yrs. imprisonment and 80-400,000 baht fine
	Those who force or torture others into prostitution	10-20 yrs. imprisonment Life imprisonment and a 200-400,000 baht fine if the prostitutes are seriously injured Life imprisonment or Death penalty if prostitutes are killed

Source: [www.unwto.org](http://www.unwto.org)

In additions to the above enactments which have significant bearing on child rights and child protection in Thailand, there are several legislations which directly and indirectly provide and address important aspects for child protection. These acts are as follows:

- a. Civil Registration Act, 2008 and the Nationality Act, 2008 deals with aspects of citizenship.
- b. The Alcoholic Beverage Control Act 2008 ensures that children are not exposed to alcohol and other addictive substances at an early age.
- c. The Juvenile Family Court and Juvenile and Family Procedure Act 2010 provides mechanism of Juvenile Justice i.e., where children are involved in crimes.

It is important to note that the Criminal Procedure Code and the Penal Code were amended on several occasions so as to be in consonance with other related laws and also to meet the changing needs of the society. Since 2012, the attempts at working on improving condition of children in Thailand has focused on homogenising all national laws. Thailand has established committees and sub-committees under direction of

National Child and Youth Commission, Thailand. The main vision of these committees is to lay a road map for the direction in which policy initiatives should work. The most detrimental factor according to Thai officials is the inability of these acts to bridge the recommendations of UNCRC with Thai law. Thus, concerns for children have taken a new direction with an overhauling change in Home Workers Protection Act, 2010 that has envisioned safe working environment for children over 15 years of age.

In addition to the above legislative steps, Thailand has also involved its administrative machinery for effective enforcement of the above laws. The National Economic and Social Development Plan (2017-2021) is one among the several recent initiatives taken by Thailand Government as a part of child protection policy. This included mechanisms like creation of government-NGO tie ups to ensure education is health, hygiene and negative consequences of sexual engagement with multiple partners. Thailand is also attempting to provide protection by enforcement of its national legislation and through development even though it midst of political transition. The Department of Social Development and Welfare assists young girls working in commercial sex industry by providing them with shelters, medical care, rehabilitation, education and occupational training under the Occupational Assistance Program. In Thailand, Child prostitution is always linked to tourism, therefore, the Tourism Authority of Thailand (TAT) has taken some strong actions to prevent and discourage sex-related tourism. Over the past years, TAT in co-operation with the Tourist Police has launched several initiatives to apprehend sex tourism operators and prosecute them.

#### *Limitations in the legal provision of Thailand*

Thailand covers almost all aspects of children's concern and attempts to create strict laws for the prevention of any kind of abuse of Thai children. However, the present Criminal Code does not cover several aspects of child prostitution:

- a) Definition of 'customer': The term customer is not clear in the legal domain. It includes people who are trying to engage in sex but overlooks the ones who are pushing children to engage in it, especially the parent.
- b) Implementation is weak: The implementation of these laws is very weak and due to too many loopholes it is always easy for paedophiles to escape.

- c) Lack of strong extra-territorial legislations: Criminal laws are unable to counter foreign tourists who escape back to their lands and there is no mechanism to pressurise national governments to take it more seriously.
- d) Penalties should be far more strict and compelling so that the thought of punishment itself ensures non-violation of child rights.

Despite the above actions, loopholes become evident when it is seen that even though these provisions are strong on paper, the law implementation mechanisms remain shabbily implemented. The child policy of Thailand is a platform for the government to show its humanist side to the world and legitimise its overt inclination towards tourism. This kind of approach shows that Thailand has, time and again, focused at drafting policies overloaded with essentialism. Within the policy discourses, there are always multiple discourses that attempt to strategically target the problems faced by Thai children. Thailand ensures that all domestic legislations towards paedophiles corroborate a strict action mechanism towards offenders.

#### *Thailand and International Arrangements to Child Protection*

Many international instruments and provisions have been signed and accepted as a part of Thailand's initiative to curb sexual exploitation among children. The allegiance to uphold basic rights within the larger doctrine of human rights framework was reiterated by Thailand when it acceded the ICSSR and ICESR in 1996 and 1999 respectively. Both these provisions aimed at directing states to provide access to socio-cultural, economic and political benefits to children. The framework of Thailand's legal mechanism is based on the UNCRC which was acceded by Thailand in 1992. Following the guidelines of UNCRC's Articles 34 and 35, Thailand pledged to protect its children from 'all forms of sexual exploitation and abuse'. The first step in achieving this goal was expansion in the reference age for considering an act between adult and child as criminal. The prevalent reference age was 15 years for considering an act between adult and child as criminal offence but with UNCRC 'a sexual act with a child between 15 and 18' was made punishable. A related provision to this was added which declared a higher degree of severity upon offenders who used 'children under 15 years of age' for sexual gratification. The second step involved adoption of related international provisions that deal with problems faced by children like abduction, trafficking and prostitution.

<b>Table 4.2: International Instruments relating Child Rights &amp; Protection ratified by Thailand</b>	
<b>UNCHR Child Rights Conventions, Ratified Instruments in Thailand</b>	
<b>Name of convention</b>	<b>Formed Date</b>
ICERD	21 Dec 1965
ICCPR	16 Dec 1966
ICESCR	16 Dec 1966
CAT	10 Dec 1984
CEDAW	18 Dec 1979
CEDAW OP	10 Dec 1999
CRC	20 Nov 1989
CRC OPSC	25 May 2000
CRC OPAC	25 May 2000
CRC OPIC	14 April 2014
CRPD	13 Dec 2006
CPPED (Signatory, not ratified)	20 Dec 2006
<b>International Labour Organisation and Thailand (As on 2016)</b>	
* <b>C123</b> - Minimum Age (Underground Work) Convention, 1965 (No. 123)	5 <sup>th</sup> April 1958 (Not in Force)
<b>C138</b> - Minimum Age Convention, 1973 (No. 138)	11 <sup>th</sup> May 2004 Minimum Age required: 15 Not applicable to Sex Industry
<b>C182</b> - Worst Forms of Child Labour Convention, 1999 (No. 182)	16 <sup>th</sup> February 2001 (In Force)
<b>United Nations Office of Drugs and Crime (UNDOC)</b>	
United Nations Convention against Transnational Organized Crime	
Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime	

Source: [www.un.org](http://www.un.org)

Thailand ratified CRC-Optional Protocol on the sale of children, child prostitution and child pornography in 2006 which was a supplement to the UNCRC. It mandated clearer requirements for its member countries, in this case Thailand, to take actions that would put an end to the commercial sexual exploitation in Thai tourism. It gave a new direction to Thailand in defining child prostitution in relevance with the changing contours of paedophile activity in Thailand. The Thai government borrowed crucial criteria and crafted a new dimension in perceiving 'prostitution'. As against a strict stand against prostitution, Thailand made it 'partially legal' only for women and men and held on to its deep commitment in creating instruments to punish activities that harm children (UNICEF 2009).

Thailand believes in gender parity as a crucial mechanism in ensuring a better environment for its children. In its commitment in bridging the gender asymmetry gap, Thailand as early as 1985 signed the Convention on the Elimination of All Forms of Discrimination against Women. The convention pressurised Thailand to 'take appropriate measures, including legislation, to suppress all forms of traffic in women and exploitation of prostitution of women' (Article 6). An inter-related problem to this was the increased prevalence of racial discrimination within prostitution and trafficking in Thailand. In order to preserve the dignity of children coming from lower strata in society, Thailand ratified the International Convention on the Elimination of All Forms of Racial Discrimination in 2003.

The increased statistics on the involvement of children in labour for sexual purposes prompted the state to sign the ILO Convention No.138 as early as 1973. It laid down provisions for a minimum age for using children in 'hard labour'. Accordingly, children below the age of 18 were prevented from working in sectors that involved extreme physical harm. This concern was reflected in the 7<sup>th</sup> National Economic and Social Development Plan in 1992. The Prime Minister declared a policy directive to ensure strict adherence to law so as to eradicate the menace of child labour for sexual gratification by 1996. In 2001, Thailand became a member of the ILO Convention No. 182 since 2001. This membership compels the removal of 'worst form of child labour' from Thailand which involves using of children for 'commercial sex, child pornography and/or trafficking' (ILO 2006: 121). In order to eliminate 'worst forms of child labour', a supervisory body namely the Committee of Experts on the Applications on Conventions and Recommendations was created. It instantly reports



any violation to Thai authorities for immediate action in mitigating it. In dealing with mechanism of labour conventions such as the Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery; Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others are also effective.

Thailand adheres to all the guidelines given by the UNWTO and declared its firm stand against child sex tourism since 1995. In order to give a pragmatic orientation, Thailand contributed US\$ 2 million to the Task Force to Protect Children from Sexual Exploitation created by UNWTO in 1997. The firm commitment to enforcing morality and ethics was reflected in 1999 by Thailand's adoption to the Global Code of Ethics for Tourism. As per all the above-mentioned initiatives, Thailand directed tourists to uphold the spirit of 'child protection' within its land. It also aimed at providing strict guidelines for tourists 'to follow the national legislation' that protect Thai children. These UNWTO Code of ethics and other mechanisms are extremely limited in nature as they are moral directives having very little legal force.

Since 2006, Thailand has been appreciated for its international commitment in mitigating the harm done to children through 'sexual engagements'. In order to ensure protection and reduce abduction of children, the Thai state ratified instruments to protect children who are trafficked and abducted across borders to be used for purpose of prostitution. However, the array of initiatives taken by Thailand by ratifying international human rights instruments remains ineffective in combatting the problems faced by children. The most crucial reason for this failure is the lack of strict implementation of these laws both at the international level as well with domestic framework of Thailand. There needs to be a strict and sincere adherence to standards of convention so that they do not remain toothless endeavours.

#### *NGO and Child Protection in Thailand*

There are several non-governmental organisations (NGOs) that are dealing with child rights in Thailand. They articulate different strands on child protection and provide international stand in arguing about the same. NGOs also pressurise the Thai state in reworking their policies in consonance with changing requirements of society. Different NGOs provide alternative vistas to child protection norms and thereby work in consonance with state and other international bodies in ensuring grassroot level initiatives.

<b>Table 4.3: NGOs working in Thailand for Child Rights and Protection</b>	
<b>NGOs working in Thailand for Child Protection</b>	
<b>Name</b>	<b>Basic Objectives</b>
The Centre for Protection of Children's Rights	Education and Basic Entitlements
The Chiang Mai Child Protection Committee	Child Prostitution and Trafficking
The Foundation for Better Life of Children	Health, Education and Basic Necessities for Survival
End Child Prostitution in Asian Tourism (ECPAT)	Protection in Tourism
The Coalition to Fight Against Child Exploitation (FACE)	Child Exploitation
The Kamia Project	Physical Assault, Abuse and Neglect
Good Shepherd Welfare Centre	Neglect, Education, Health Care
Child Rights Information Network	Entitlements to Basic Necessities and Rights
Centre for the Protection of Children's Rights	Prostitution, Trafficking and Pornography
New Life Centre	Abduction, Trafficking and Child Rights
The Home of Eternal Joy	Basic Necessities, Education and Health Care
World Vision	Health Care, Social Welfare
Stop Demand	Child Trafficking and Prostitution

Source: [www.hrlibrary.umn.edu](http://www.hrlibrary.umn.edu)

The lack of law enforcement mechanisms led to the increased importance of non-governmental bodies dealing solely with the problem of sexual exploitation of children. NGOs highlight the increase in child trafficking to and from Thailand for sexual purposes. ECPAT works with Anti-Human Trafficking Division (AHTD) and has taken initiated targeting of those locations in Thailand from where trafficking takes places more easily. The NGO Stop Demand has been working in consultation with the Ministry of Justice, Thailand. It focusses on those causes that lead to increased proliferation of causes and aims at reducing them so as to improve overall scenario of child sexual exploitation in Thailand. In shaping an action-oriented outlook, the New Life Centre is an NGO working with children born through prostitution. Thai law allows prostitution partially but in such situations the rights of prostitutes in case they get pregnant have not been considered. Children born out of such sexual interactions live in an abusive and unhealthy surrounding. Thus, the NGO tries to counsel children to opt for alternative employment rather than prostitution.

A unique model engineered by NGOs and supported and aided by the Thai state is the support service model. Since 2009, approximately 200 service centres have been built

throughout Thailand for children exploited in trafficking and prostitution. The building of shelters, occupational centres and training arenas have been initiated to ensure the percolation of welfare schemes to children across Thailand especially the victims of trafficking. Government bodies work hand-in-hand with NGOs to run free hotline services. These services are managed by the Royal Thai Police, the Anti-Human Trafficking Division and financed by the Ministry of Social Development and Human Security (MSDHS).

Despite significant progress made by NGOs in highlighting and dealing with the problem faced by children several grey areas continue to exist in Thailand. The action taken by NGOs are generally motivated by selfish interests based of calculated necessities and requirements. Thailand's NGO concerns require particular efforts, having nation-wide implication, targeting needs of victims as well as potential victims and ensuring interest of the child. It also calls for a strong proactive stand in ensuring the exposure of all cases, protection to witnesses and a commitment to assure proper investigation and get paedophiles convicted.

#### *Regional Instruments*

There are several regional instruments across the world that deal with the problems of children and make adopt ways to mitigate their problems. Unlike other continents, there is no single regional forum that deals with the common problems of Asia. It is within the Association of Southeast Asian Nations (ASEAN) that questions of human rights in general and child rights in particular have been taken up. These considerations are a part of the larger objectives of the regional organisation as it does not consider questions of child rights for separate purview. The analysis of the treaties and conventions mandated to protect child rights in ASEAN are used as reference points to understand the organisations approach to children.

The reaffirmation of ASEAN's commitment towards the protection of children, improvement in life-conditions of minor and 'creation of opportunities for children' is given in the Declaration on the Commitments for Children, 2001 (Article 6). It also calls upon ASEAN member-states to ensure the removal 'of violence, abuse, neglect, trafficking and exploitation' among children (Article 15). It targets at related variables that sustain the degraded problem among children and call for creation of 'employment opportunities for adult family members' (Article 8).

A special body was formed in 2009 as a part of the ASEAN structure, namely the ASEAN Intergovernmental Commission on Human Rights (AICHR). The fundamental vision of the body was to uphold human rights in general and ensure awareness among people on issues of child rights (Article 1). In 2010, a regional initiative to cooperate on child protection by making it a top-priority was reflected in The Hanoi Declaration on the Enhancement of Welfare and Development of ASEAN Women and Children (2010). It marked a departure from earlier attempts within ASEAN and it attempted at building a strong integrated community-based initiative to pay special attention to children's problems.

The Hanoi Declaration contained 21 articles of which the first three called upon the member-states to take 'greater responsibility in protecting children and crafting policies that favour child rights' (Article 4). Some of the measures to attain these policy directives include 'mechanisms like drafting plan, allocating budgets, scrutinising processes in different countries' (Article 4). The Hanoi Declaration also called for the establishment of the ASEAN Children's Forum, a special platform that worked for child protection in Thailand. The forum based on its mandate to protect rights of children conducts several activities that promote idea of child rights among different stakeholders.

## **PRACTICE OF PAEDOPHILIA: ASYMMETRIES AND CONCERN**

Paedophiles all across the globe have appreciated the positive image of Thailand as a friendly state borrowing heavily from sexual liberation discourses. They have noted that legal framework in Thailand is such that, both in past and present, Thailand has attracted high number of tourists for seeking sexual pleasure with Thai children or trafficking them outside the country for sexual purposes. The number of tourists in Thailand till January 2018 was 35.58 million people which is almost half of the entire population of Thailand (TAT 2018). Despite several positive actions by the Thai state to take strict measures to protect children, nothing much has happened in reality. The existence of several nodes of opportunity to interact with children and establish prolonged relations is not a big challenge for paedophiles. It must be noted that foreign paedophiles are not the only ones to benefit from this thriving industry. Thailand itself has a heterogeneous domestic constituency that debunks theories of child protection and invokes the image of an ever-approachable Thailand for child prostitution, child

sex tourism, child pornography and trafficking (NOCHT 2006). Children are made to believe that monetary gains are the absolute necessity of life by these procurers, which is further reiterated by their life conditions and situations. Paedophiles use the disadvantageous position of children in latent ways to generate a feeling of immorality among them, so that they start regarding these sexual engagements as a way of earning livelihood (Montgomery 2001: 77). The belief that there is nothing wrong to earn money and sustain oneself by sexually satisfying the client has been the root cause of continued child abuse in Thailand.

This chapter will try to bring into light the practices prevalent in the Thai sex industry with regard to little children, both male and female. Several tourists, all belonging to different parts of the world, seek to explore sexualised tourist pockets and use children for sexual gratification. The practice of sex tourism compels us to look into a critical engagement with theories on child sex tourism. The theories suggest that paedophiles desire for sexual gratification facilitates their encroachment into sexualised pockets and zones in Thailand. Moreover, if one examines the interpretations of these travelling paedophiles a darker and more complicated image emerges of the Thai child sex industry, which has survived for a long time due to discourses on sexual spaces in the countries of origin of paedophile tourists, local paedophile groups, etc.

Thailand was an unexperienced destination for me till February 2017, when I visited the country as a part of my doctoral fieldwork. During my fieldtrip, I spent lots of time in travelling around the country, visiting organisations that advocated and promoted child rights and, most importantly, going to the areas that survived on sex workers and sex trade like Patpong, Soi Cowboy, Bangla Road, etc. These roads are well lit and filled with young girls, boys, men and women who attract customers for paid sexual services at prices as low as 50 baht, with most of them offering a free show for merely buying them low cost drinks (as cheap as 30 baht per drink). The main of my fieldtrip to these areas was to look into the reasons behind the engagement of children in the Thai sex industry and to understand the views and opinions of Thai child sex workers.

The first few days of the field trip was in Pattaya, which is a famous coastal city and a highly acclaimed tourist destination. On my visit to these places, I noticed several male and female tourists entering the bars, clubs and shows not only watching the performances but also for buying services including sexual favours from girls and boys who seemed to be very young in age. Most of these places, like go-go bars, lady boy

cabaret shows, stripper clubs and discotheques are full of people of all age groups and it is very difficult to ascertain the exact age of the sex workers. Nonetheless, by the way they approach the customers and attract and allure them with kinky voice goofs and notes, it becomes easy to differentiate them from the older ones who perform sex shows to entertain the general public.

The environment in these places is one of celebration and it is not difficult to speak to fellow customers about their preferences, likes and dislikes. In several unstructured conversations with customers, some interesting facts about the whole system of operation of these bars were revealed. Most of the Thai touts who stood on the streets pass out either a menu card or flyers containing pictorial depiction of the kind of shows. These touts are mostly in their 30s and 40s and are dressed either in formal black or white casuals. Moreover, girls beautifully dressed and loaded with make-up, stand behind glass windows and try to attract customers to their outlets.

One is amused by conversations that take place between the customers. One such conversation was between two young boys to visit a private show that staged young boys and girls entertaining the audience by amusing sexual acts. The tricks and sexual activities in these private shows are popularised by considering them as a part of authentic Thai culture. In my conversation with a young boy who approached me to serve mocktails, I came to know about many feelings and emotions that run along with them during the performance of these vulgar shows. It is highly disturbing to know the many stories that run behind these shows. Little children, shown as being much older than their actual age, stage performances and cheer audiences by performing sheer sexual acts. The boys were all walking around to earn tips and the girls were flirting with male and female customers to earn money against the services they were ready to offer.

The Thai state and its policy makers are very clear about the fact that the constant increase in the number of foreign paedophiles increases incentives for the existence of the sex industry (Bowes 2004). Tourism officials are of the opinion that the only way to lessen the impact of child sex industry is to control the influx of transnational paedophiles into Thailand. This is based on two important assumptions: first, that foreign paedophiles have a high level of interest in using children to gratify their sexual needs and second, that the entire child sex industry is based upon the interest of foreign men in local children. Moreover, the Thai child sex industry is very complex: certain

venues employ sex workers who directly sell their services to customers while other venues offer much more than a simple cash-for-sex exchange.

The variety in terms of entertainment and the potential to earn profit from what the sex industry has to offer is huge. The sexualised venues, just like huge bars, offer different types of drinks and people buy them for pleasure as well (Wilson 2004: 77). Further, several forms of foot and head massages and spa therapies are also provided there which are non-sexual in nature but help in generating profit at these clubs. The sale of drinks and therapies are indirect forms of establishing contacts and connections with prostitutes, to increase companionship and engage in sexual activities with them. Moreover, these venues are extremely glamorous and attract the tourist gaze (Wilson 2004: 96) by providing comfortable infrastructure and direct view of the shows. To a paedophile a bar offers imagination, fantasy and spectacle so as enjoy unrestrained access to pleasure out of children who pump and deck themselves as adults to escape legal encroachments by Thai officials. These gazes are manipulated and constructed in a manner that paedophiles tend to get allured by such attractions and end up paying more than expected or desired by themselves. Thus, paedophiles are voyeurs who actively watch the movements during the show and indicate power discourses that generate within travel spaces in Thailand.

The ways in which tourists seek out these sexual spaces goes beyond the normal purview of sex tourism. Paedophiles are so eager that they use unconventional ways and means to engage in sex with children. Destination tourism, travelling all the way across borders to seek sexual engagement, is one such example. In conversations with anonymous paedophiles around these bars several stories of escapades, interaction, hiding and concealing becomes evident. The extent of curiosity to engage with children is so high that they find their way out to these sexual areas by linking up with pimps, middle agents and brothel owners. This kind of curiosity is not a one-time affair and people seek to come back repeatedly in order to have easy access to engagement with children.

The experience of paedophiles differs and varies depending upon the context and time period of arrival. Sex tourism and sexual engagements with children have totally different references and experiences when committed by a female or a male paedophile. There exists a commonly held assumption that only male paedophiles travel to engage with young girls. However, this assumption is incorrect when the estimated numbers of

female paedophiles are taken into account (Cohen 1982: 38). Over a period of last ten years, the number of male travellers from Spain, UK, Portugal, Germany and France to Thailand has been almost equal to the number of female travellers from these countries. It is difficult to ascertain who are paedophiles amongst them but looking at the vast number of people who visit go-go bars it is not a daunting task to use it as an evidence to the above-mentioned hypothesis. Abundant literature is available of the male paedophile tourist who travel across Thailand to engage in sex with local girls. However, there are several critical debates which are emerging recently that highlight how Western female paedophile tourists are also roaming on Thai streets to engage in sex with young girls and boys (Ryan and Kinder 1996: 72). Western paedophiles, both male and female, enjoy holidays and engage in leisure activities of sexual nature. Thus, gendered theories of male encroachment on young girls get challenged and problematised in the context of the Thai sex industry.

Paedophile experiences in foreign lands is based on a touristic and voyeuristic gaze wherein the Thai child sex workers are commodified, decorated and presented in a manner suitable for customer attraction. It is guided by a variety of sources and the way in which social, print and other forms of media portray them (Urry 2002: 56). The Thai sex workers are made as symbols of attractions and tourist fantasy. The entire country gets engulfed and engrossed in creating visual symbols of real Thailand by indirectly using prostitution as an important tool.

The paedophiles in Thailand create a mesh and connectivity to satisfy the desires of foreign paedophiles and other tourists to constantly create flow of economic resources. Several transnational paedophiles who visit Thailand in search of romantic as well as sexual relationships with Thai child sex workers contact the local ones for guidance and facilitation. These interactions further the interest of foreign travellers who reward local men and women with large sums of money and referrals of their paedophile friends back home. Thailand, through these nodes of contacts, becomes more than a sex tourist destination. It becomes more of a home for paedophiles from all across the globe who come to enjoy sex and pleasure of sexual gratification with children without the fear of being caught. Global identification resources and contact points are generated and easy access to children is made possible in Thailand as these local paedophiles are generally employed in go-go bars, nightclubs and strip clubs as hosts, waiters and facilitators.



The chief reason why paedophile concerns have been overlooked so far is because the threats emanating from sexual engagements is not as omnipresent as the benefits derived from such work. Health issues like AIDS, psychological trauma and other negative impacts of child prostitution are weighed against so-called positive impacts of prostitution like money, gifts, love and power. Child prostitution brings with it a self-assertive belief of power to make a customer dependent on one's service, suggestive of a sense of powerlessness in the sex worker. Child psychology has often not been understood from the point of the doer, wherein the child considers himself/herself as a rational actor who sells his/her body in return of money, thereby reassuring a stronger ego projection of the self. Children maintain their own distinct identity by considering themselves as givers to people who are in desperate want of the experiences that they can provide.

Oppression is the chief characteristic of the nature and structure of Thai tourism industry (Young 1990: 35). The groups and identities are structured in such a way that inequality seems to become the essence of the Thai sex industry. In the course of interactions between the paedophiles and the child sex worker, political, economic and socio-cultural oppressions and marginalisations are automatically created (Young 1990: 42). There is an innate desire among paedophiles to use children and create oppressive structures of interaction, yet most paedophiles tend to view their own behaviour not as oppression but as activity which would lead to the emancipation of children. It is this logic that needs to be punctured and problematised to its core to break the chain of unequal relationships and create a safer world for children. In the nature of tourism lies the concept of the other, which emerges when we contrast the role of German paedophiles *via-a-vis* the children belonging to other nationalities than their own. Thai children belonging to a particular culture, belief, lifestyle and way of living are differentiated from paedophiles who operate and exist in a starkly different way.

TAT is deeply committed to combat the image of Thailand as a child sex tourist's paradise and seeks to stop the entry of paedophiles as they have an inclination to explore sexualised spaces within Thailand. Paedophiles are intrigued by the easy access to children for sexual engagement in Thailand and readily visit sex shows, ping pong bars and other such places for sexual engagement. However, in order to make policies to deal with the menace of sexual exploitation by paedophiles, the Thai state needs to re-examine how sexualised spaces in Thailand operate and work. It is imperative to

analyse and weigh the demands raised by paedophiles vis-à-vis the supply by child sex markets and then devise pragmatic ways to deal with the menace. Even though it is difficult to uproot the market driven, consumer-oriented sex markets, the Thai state must take initiatives to move towards a more non-exploitative and sustainable form of travel by foreigners. Social responsibility clubbed with sensitivity can help to drastically reduce the size and scope of child sex markets in Thailand.

### *Child Prostitution*

Child prostitution has been a part of Thai history for a very long time (Lee 1991). The history of paedophile engagement with children in Thailand is not a recent phenomenon. The increased proliferation of poverty has resulted in increasing disparity between rural areas and urban areas (ECPAT 2008). The rural areas have remained poor for quite a long time while the urban areas in Thailand industrialised and modernised (Englund 1998: 71). Urban areas had comfortable life-standards mainly due to industrial growth (Lim 1998: 4). This led to the emergence of alternative sources of income and the creation of sex markets in Thailand, and also made Thai children from rural areas and poor families vulnerable to 'procurement agents for the child sex industry' (Kane 1998: 23).

The thriving sex industry in Thailand has attracted paedophiles and other sex tourists who use children for sexual pleasure. Statistical data collected from different sources stands as a testimony to the above occurrences. Chulalongkorn University research studies indicate that approximately 58,00,000 children were sexually exploited in Thailand during the years 2012-2017. These children were below 18 years of age which makes sex with them a crime under Thai law (CRPC 1997). Fortunately, as the societal approach to child sex offences began to transit from a liberal orientation to a stricter one, there was a fall in the number of sexually exploited children by 5% in between the year 1995-2000 (ECPAT 2008). Between 2001 and 2005, as many as 850,000 children were exploited by sex offenders (ECPAT 2005). Thailand signed specific Conventions in order to reduce the number of children who were being sexually exploited. This rising problem was voiced by several anxious Thais who wanted a proactive approach of the state, in response to which the Thai government signed the UNWTO Code of Conduct. Reiterating the vision and objectives of the Code, the Thai government promised to build a society free of child prostitution. The government expressed its concern about

the actual figures of the sexually exploited children and pledged its firm stand in dealing with the menace.

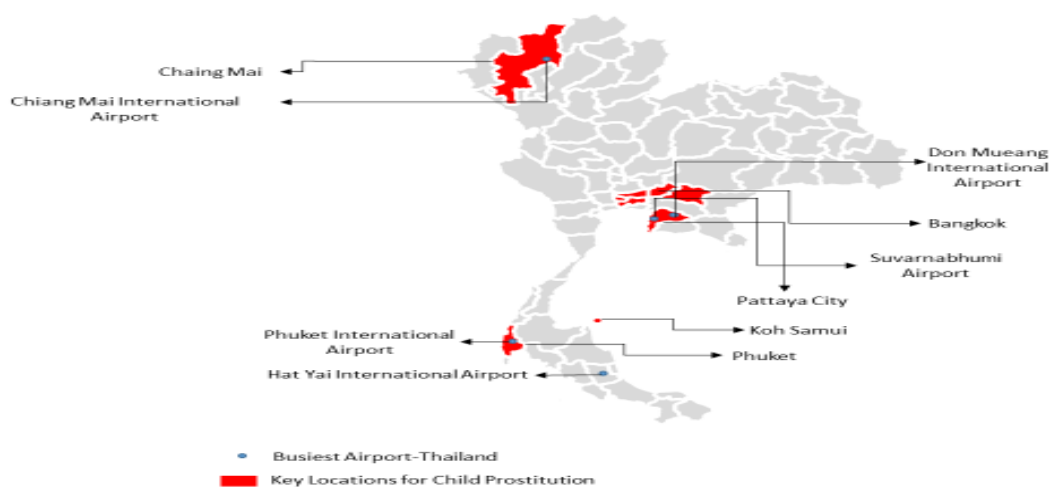
In recent years, commercial child prostitution is increasing in large numbers. The revenue generated from commercial sex trade in Asia every year has crossed 15 billion US dollars. Child prostitution in Thailand is sustained by three types of children who cater to the needs of the perpetrators. First, trafficked children from neighbouring countries, who come from very poor backgrounds and are compelled by circumstances of life, force and use of fraud (Singh and Hart 2007). Second, consenting children, who get involved in prostitution out of their own choice or are pushed into the industry by parents and care-providers (Montgomery 2001). Thirdly, a category of child prostitutes is pulled into prostitution by fellow children who are already a part of sex industry by the first two categories (Farr 2005).

Paedophiles tend to target a new child each time they visit and there is no count or certainty of the number of visits that paedophiles make to Thailand. Once a consensual bonding is created, they begin to repeatedly target the same children so as to ensure safety, control and build a sense of fear over them. Sexually exploited children succumb to these methods and become a part of the structure (Desyllas 2007). The child is thoroughly integrated into this mutually beneficial relationship as the use of money, gifts, love and other incremental gains attract them. This leads to a complex mechanism where the sexually exploited child becomes the new exploiter and starts alluring fellow children into this circle of exploitation (Baker and Phongpaichit 2005: 89). In other words, over a period of time these victimised children, already submissive and experienced, become proponents of these exchanges as they are tempted by the benefits (Montgomery 2004). The likelihood of going back to their earlier life is very bleak in the case of child prostitution. The whole cycle of paedophilia, sex market, money, power and control merely change from one dimension to another, never letting the child to exit the industry. Thus, paedophilia is a process that paedophiles engage in with the intention of gaining sexual gratification from children on the basis of their needs and desires (Farr 2005: 77).

The theme of child prostitution comprising the oppressed agency of child and the exploiter is not naturally ordained. Thanks to increasing international efforts and regional mechanisms, the exploiter and exploited are perceived to be in a relationship of exploitation. However, there is no clear understanding about the authenticity of the

claim that the child is a victim. In most of the cases in Thailand, the child starts as the victim and then becomes the exploiter (Hall 1994: 52). Without an iota of doubt, paedophiles compromise with principles of humanity in order to force their demands on children. This act of exploitation tends to disconnect the child from his/her own humanness so that morality, ethics and a sense of body politic becomes redundant. This moment of suffering is a disconnect from the child's values and principles, leading to an increased acceptance of the terrible circumstances in which the child finds itself. This hatred, revenge, disregard and other cultural forces culminate into the birth of an exploiter within the victim (Montgomery 2005: 78).

An analysis of the situation of child prostitution reveals that the entire mechanism is born and sustained because of the above-mentioned relationship between the adult and child (Theobald 1994: 56). The rational outlook to child prostitution is also provided by the remuneration, in cash and kind brought to the exploited. Even though a child tends to be treated as a sexual object, the economic benefits attract the child to actively pursue prostitution. Nonetheless, paedophilia is a form of slavery in which children are forced into providing sexual labour (Shaw and William 1994: 9). The strength of paedophiles, coming from financially strong economies, gives them an upper hand in reaching a deal with pimps. In other words, the middle-men and facilitators compromise with the bargained amount and several other crucial factors to ensure continued clientele (Lee 2001). Thus, power and oppression are a chief inherent characteristic of the relationship between the paedophiles and sexually exploited children.



**Fig. 4.2: Key Location for Child Prostitution in Thailand**  
 Source: [www.mapsofThailand.org](http://www.mapsofThailand.org) and [www.world-airport-codes.com](http://www.world-airport-codes.com)

Paedophiles travel to developing countries in search of cheap sex and take advantage of the loopholes in legal enactments. Thailand is a preferable destination to engage in child prostitution as foreign paedophiles develop established links with domestic pimps, facilitators and brothel owners (Montgomery 2001). While coming on a holiday trip or for business travels, a stop over by a paedophile in Thailand is not a financial burden either. Several foreign paedophiles, convicted in their own country, travel and settle permanently within Thailand by forging documents and paying bribes. Once in Thailand, they set up shacks on beaches or open up a small business and are in constant touch with paedophiles based in their home country (O'Grady 1992). It is really easy for foreigners to enter and settle in Thailand due to weak legal enforcement mechanisms.

A very crucial source of articulation in determining a paedophile's engagement with child prostitutes in Thailand is based on the assumption that 'sex is not abuse, it is a necessity and a requirement of the child' (Krongkaw 2001: 76). These necessities, which according to paedophiles are based on discourses of naturalness and normality, are not a subject of morality and law (Burn 1975). Through a deliberate selection of such nuances, paedophiles convince themselves that 'victimhood' is an external creation for the convenience of society. This obnoxious belief falls flat once the perpetrators are identified and convicted in their native countries. The process of distancing oneself from 'children in native countries begin and attempts to hide homosexuality and immoral sexual practices also take a backseat' (Arnold and Bertone 2002: 212). This impulse generated by moral policing within domestic boundaries force paedophiles to look out for 'docile alternatives' (Burke and Stefania 2010). Thus, 'the subservient, Thai child becomes the antithesis of the demanding and rejecting adult western prostitutes' who are grown and 'lack innocence' (Wilson 2004).

The thriving child-prostitution industry in Thailand shows a well-documented link between the issue of ethnic otherness and sex. The eroticisation of Thai children all across the globe by using parameters like 'childishness', 'innocence' and 'fun' have intentionally carved out power discourses about childhood (Montgomery 2001). Thai children are 'romanticised, commodified and fantasised to attract paedophiles from other countries in search of children.' In Bangla road, Patpong street and Cow Soi Boy bars use names such as 'classrooms', 'baby' and 'school girl' to attract customers. Moreover, girls and boys are dressed in school uniforms, carrying school bags and make

two plaits emphasising that the virgins and children are easily available in Thailand. This sort of projection is a unique characteristic of Thailand where the line of demarcation between the child and adult is obliterated in order to attract customers (Burke and Stefania 2010). These promises provide Thailand with a unique identity of exoticness which attracts paedophiles who are constantly looking out for children for sexual pleasure and gratification (Wilson 2004).

Hardening stances of Thailand in mitigating child prostitution have not yielded great results. If one attempts to look at the logic behind the continuing child prostitution industry the narrative of the child has to be logically understood. Children are the choice-makers and generally opt for a submissive approach in containing sexual abuse (Raffaerty 2007). The lack of financial security, ideological bolstering of sex as a way of life, constriction of spaces that condone child prostitution and an ever-increasing influx of paedophiles to Thailand have led to a form of acceptability among people in Thailand (Wilson 2004). Several cases of arrest of paedophiles have taken place in recent years. People belonging to UK, Germany, France and Switzerland have been convicted of sexual crimes being committed on children. Data of the travels of tourists in millions, both male as well as female, to Thailand each year. There has been a 25% surge in the number of foreign travellers who come and reside in Thailand for leisure stays (TAT 2017).

The child prostitutes articulated a more pro-child position which further pushes the paedophiles to reinstate their own perspectives in the minds of children. Growing unease with the Thai state, increasing apathy towards their limited access and the filial compulsion of generating resources creates a more forceful and a less pliant position vis-a-vis morality and ethics (Royal Thai Embassy 1997). While children after a certain point of time tend to reject human rights advances and propositions, it is strongly believed that children's exposure to prostitution has 'possible threats, and a level of coercion' which has a far-reaching implication on a child's mind. This can be seen in a degree of acceptability among children of prostitution as an easy way of survival and life.

Power asymmetries are inherent between the transnational paedophile networks and their relation to children (Kelly et al. 1995: 89). These inequalities by and large get constructed in the inability of a child to physically prevent an adult from harming him/her. Also, power asymmetries emerge between rich and poor economies wherein

child prostitutes are constrained by economic, political, economic and other variables of inequality (O'Connell 2005). The gap between rhetoric and certainty is disparagingly high in Thailand as laws promise a lot but have no pragmatic basis. Child prostitution does not benefit the child and its family but it is a source of high income for the state (Lowe and Pearce 2006). The compounding effect of prostitution and tourism in Thailand makes the government deaf to the child rights voices and blind to the bewildering statistics on sexual exploitation (Taylor 2005 :79). Despite knowing very clearly that child prostitution has a heavy bearing on the overall health of the society, Thailand has preferred the politics of economic benefits over others.

### *Child Pornography*

It is not a necessity among paedophiles to engage in sex with children in person. Time and again, paedophile rings are caught, exposed, convicted and punished by legal structures, media and other institutions. In order to escape embarrassment, ridicule, media shaming and other legal sanctions, paedophiles have sought alternative mechanisms. Since 2005, with an ever-increasing proliferation of the Internet and the Web paedophiles, have opted to engage in virtual sex for sexual gratification (Royal Thai Embassy 2009). Child pornography is becoming increasingly rampant, transcending borders, breaking developed and developing dichotomies and creating virtual space of interaction. The ever-increasing demand of child pornographic material has forced facilitators to pick children from rural backgrounds and cities for production of pornographic videos (Wilson 2004: 75). Legal provisions are stipulated to stop the high rates of trafficking for purpose of sex prostitution and filming of pornographic material (UNICEF 2009).

There is no clear-cut definition of the term pornography. However, Thailand has for purpose of legal convenience described pornography as a part of the general obscenity law. As per the law, 'the production, distribution of any obscene material contained in printed matter, photographs, films, or audio or video tapes' is a punishable offence. Additionally, Anti-trafficking in Person Act, 2008 includes as a part of Section 4 that 'production or dissemination of pornographic material as a criminal offence' (Section 4). However, this Act has several limitations as it does not cover all aspects related to child pornography like 'distribution, importing, exporting, offering, selling or mere possessing' (ECPAT 2008: 75).

The first and foremost initiative taken by Thailand to curb child pornography was in 2003. The Child Protection Act, 2003 criminalised pornography itself. In lieu of this provision ‘behaving in a pornographic manner’ was also considered a criminal activity subject to high degree of legal scrutiny. It also criminalised ‘threatening, abusing or inducing a child’ for production of pornographic material (ECPAT 2007). In 2007, the government drafted The Computer Crime Act which included several provisions that targeted suppression of computer usage for procuring pornographic material. As a clear mandate, the law aimed at ‘preventing and suppressing’ its people to have access to pornographic materials. It was the subject of criminal law and strict penal implications were imposed upon the doer (UNICEF 2009). The biggest loophole of this act, till date, is regarding its applicability. The decision regarding the ‘usage of individual for procuring material’ is left for interpretation at hands of administrative interpreters and efficient and comprehensive enforcement is not possible (Taylor 2005). Following this, Computer Crime Act, 2007 and Computer Control Act, 2016 the Thai Ministry of Information and Communication began strict scrutiny of portal and accessed internet data records of its people to curb the menace.

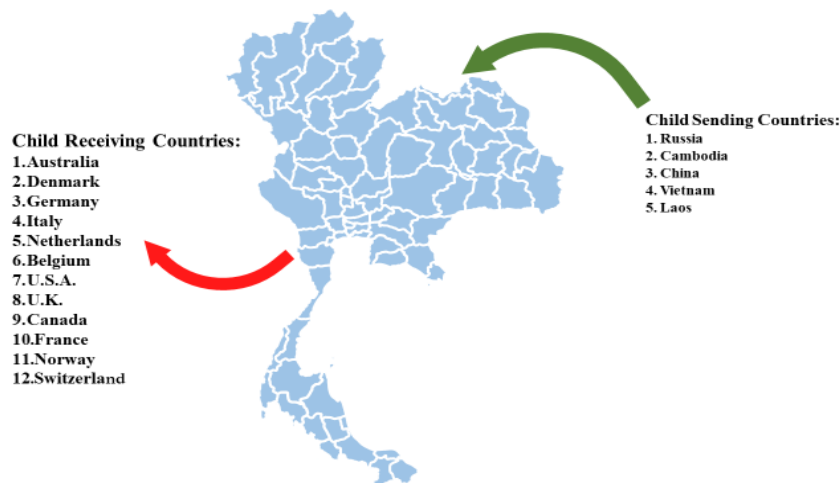
Apart from legal mechanisms, unconventional methods have also been adopted to curtail child pornography and its implication on Thai children. ECPAT Thailand joined hands with government to train officials, staff and parents the relevant methods of scrutinising and monitoring accessed data in Thailand. Paedophiles try to contact children through online dating service websites and other relevant sources to engage in virtual sex in exchange of money (Montgomery 2011). By explaining these mechanisms to parents, the governments aimed at increased awareness among its people about child pornography and how to prevent children from online predators. To make the task of reporting cases of child pornography and any other exploitative content on the internet to government officials the Thai Hotline ([www.thaihotline.org](http://www.thaihotline.org)) was created. It provides immediate access to government sources in order report any act of abuse

### *Child Trafficking*

Child trafficking happens at three main level in Thailand. First, those cases of trafficking where children of Thailand are sent across to ‘demanding countries’ in order to sustain supply-chain demands of sex among countries (Montgomery 2011). Second, children who are trafficked within Thailand’s borders from poorer areas to areas where



sex economies are thriving. In search of economic benefits children from Phayo, Chiang Mai and Krabi travel to Phuket, Pattaya and Bangkok and become ready to sell their bodies. Third, children of neighboring weaker economies sustain sex markets in Thailand. With an increasing requirement of child prostitution children are trafficked into Thai borders with promises of benefit (ECPAT 2009).



**Fig. 4.3: Thailand as a ‘demanding country’: Emerging Forms of Power Asymmetries**

Source: [www.mapsoftheworld.org](http://www.mapsoftheworld.org) and [www.mapofThailand.org](http://www.mapofThailand.org)

As per statistical data provided by the Royal Thai government from 2012 to 2017, there has been a 30% increase in number of trafficked children in Thailand (UNICEF 2015). In 2017, as many as 181 of 800 trafficked children were victims of sex trafficking (NOCHT 2006). It is not a very difficult or tedious task to bring these children through land, air and sea, as access to Thailand is very easy and several channels of authority can be subverted by bribing and using other corrupt means. The Royal Thai Anti-Trafficking in Persons Division has been monitoring the outflow on Thai children to other countries for sexual purposes (ECPAT 2009). It has been estimated that in 2016, approximately 700 children have been sent to different parts of the world through Thailand. In this regard, Thailand seems to be a transit as well as facilitator country which absorbs as well as sends children for sustenance of global sexual industry.

The government uses several other mechanisms to reduce trafficking in the country. These are both preventive as well as protective initiatives by the state to control increased rates of child trafficking both from as well as within Thailand (Farr 2005). The involvement of the masses in Thailand by spreading awareness about the repercussions of sex trafficking both on the children and community is an innovative

mechanism for dealing with the problem. The reach of the Thai government increases qualitatively as well as quantitatively by including peers, neighbours, parents, mentors and other care providers who ensure timely reporting of any activity. In conjunction to spreading awareness, police vigilance has increased in the recent years who are occasionally target brothels and other areas to locate any crime related to sex trafficking (Desyllas 2007). The incorporation of international and regional instruments to make effective law enforcement is another positive step to mitigate child trafficking. Time and again, the Thai government has sent back children from different nationalities found staying in Thailand without proper documents (Rafferty 2007). Use of pamphlets, advertisements, brochures and other directive pieces are circulated in large numbers all across Thailand, especially in vulnerable areas like Bangkok, Phuket, Chiang Mai, Koh Samui and Pattaya.

## **Conclusion**

It can be concluded that Thailand experiences child prostitution and child trafficking in far larger numbers than any other country in the world. The issue of child prostitution is a universal phenomenon with differing qualitative and quantitative implications for the child. Thailand has ratified several international and regional agreements and designed several domestic legislations to prevent commercial sexual exploitation, child trafficking and child pornography. Realising the harm that sexual abuse has on children, Thailand has pledged to mitigate these oppressive structures put an end to emerging forms of neo-colonialism and slavery.

It is clearly visible that among other Asian countries such as Malaysia, Laos, Cambodia, Vietnam and Hong Kong, Thailand is one of the highest tourist attracting destinations. The chapter has looked into all the plausible reasons which make Thailand the loci among all Southeast Asian nations. The peculiarities of Thailand with regard to its spatial geography, cultural beliefs, political history and economic maladies makes us pick up the case of Thailand amongst any other countries of the region. The elements that bring to bear the reason why Thailand is the most famous destination for child sexual exploitation provide the strength as well as weakness to the nation.

By critically analysing the above-mentioned initiatives, the actual task done by Thai state in dealing with sexual exploitation of children gets revealed. By taking recourse to a more pragmatic human rights perspective it is seen that Thailand has continued to be inefficient in dealing with commercial sexual exploitation of children. There is huge

gap between policy initiatives and their implication on the existing situation of children in Thailand. Even though several remarkable legal initiatives like Child Protection Act 2003 and Anti-Trafficking Act 2008 have made significant contribution in improving condition of victims, yet it has not been able to prevent children from taking recourse to it. Several loopholes like absence of proper definitions, lack of proper data collection channels and prevalent corruption within law enforcement agencies make these initiatives fall flat. Even the regional initiatives of non-intervention among ASEAN countries contributes in the continued existence of children's problems.

There is an undeniable interrelationship between variables such as culture, economy, politics and geography in Thailand with the continued existence of child pornography, trafficking and prostitution. The problems faced by children cannot be addressed in isolation and requires a relational improvement in all the above-mentioned variables. Together with an enhancement in domestic variables, the vulnerability faced by children requires a strong operating domestic legal mechanism. Further, a stable political system would ensure improved economic policies which in turn would help Thailand overcome limitations of geography and instil an awakened culture among the youth.

The discourse on power and asymmetries get reinvigorated by the role that Thailand plays vis-à-vis other weaker economies around it. The increasing requirement of children for sustaining sex industry is a major attraction for children of weaker economies around Thailand. The increased flow of foreign children within Thailand and their participation in the Thai sex industry has been highlighted by several organisations. With ever-increasing sex industry, children from these weaker economies are attracted to the Thai child sex market as service providers. In this sense, this study has found out that power gets redefined by looking at the interrelationships that exist between economic asymmetries. Thus, small, short-term and realistic goals need to be set by Thailand in order ensure pragmatic and effective policy for children.

Finally, it is evident that mitigation of sexual exploitation of children is not the real priority of the Thai state. It has several other priorities, especially those emanating from transnational market forces. In this regard, the state is keen on sharing its child protection responsibility with NGOs and other bodies. The responsibility sharing model in Thailand tends to give more importance to the role of stakeholders in protecting concerns of children rather than state. It can be agreed that a multilevel approach to

children’s problem is the best way to deal with problems of children. However, the state should remain the most crucial protector of children and give lower priority to market compulsions and focus on addressing exploitative mechanisms.



**Fig 4.3: Political Map of Thailand**

Source: <http://ontheworldmap.com/thailand/thailand-political-map.html>

## **CHAPTER 5 – THE ENABLERS OF TRANSNATIONAL PAEDOPHILIA: UNDERSTANDING THE GERMANY-THAILAND NETWORK OF SEXUAL EXPLOITATION**

### **Introduction**

Transnational paedophile network has created a multi-dollar business which is illegitimate, multiplies economic profit, distorts images of welfare state and causes ill effects on the society and is, yet, prevalent. Globalisation, which has on the one hand fuelled trade, growth, communication and technology has, on the other hand, caused increase in sexual exploitation of children belonging to the grassroots and downtrodden members of the society. The transnational nature of paedophilia makes it difficult to be combatted by mere use of law. It requires a thorough study of its enabling elements to deal with the problem of sexual exploitation of children in the world. In addition to the political factors, there are several other enablers that make transnational paedophilia possible. Globalisation has facilitated the multiplication of transnational paedophilia and transformed its dimensions quite easily to the virtual world. Expansion in communication, technology, travel and access to communication are a few among the other reasons that enable the sustenance of the network of paedophiles all across the world. There are several elements that help in the perpetuation of transnational paedophilia but the root cause lies in the tendency of states to dichotomise children as ‘ours’ and ‘theirs’. Children belonging to one’s own nationality and a particular economic class in society become ‘our’ children, who are entitled to full protection by the legal and coercive apparatus of the state. On the other hand, children belonging to other nationalities and to the lower economic strata become ‘their’ children.

Globally, protectors of children are trying to use law as an important tool to mitigate paedophilia and its impact on children. In response, transnational paedophile groups are going deeper into organised activity so as to circumvent these protective and enforcement actions of the states and international actors. The paedophiles employ mixed methods to get their work done. At times, they try to work individually. At other times, they function in organised networks to avoid being caught and prosecuted. In Germany, paedophiles are treated as persons with mental disorder and this provides them the space to avoid incarceration and other enforcement action. Paedophile groups transform their identities (usually they are unnoticed men and women in professions

like business, politics, law, education etc.) into sex offending entities only at the time of engaging in crime, by partnering with each other or alone to commit crimes against children. It is a highly debatable topic to consider these networks as converging or transforming but it is a clear fact that they are a growing threat to society. Thus, it is imperative for states to create a flexible and tailored approach in dealing with paedophiles.

In the last few chapters we have tried to look at the ways in which state, non-state actors and other groups deal with the problem of sexual exploitation of children. In this regard, one common and universal feature is witnessed. Children have been sexually exploited at the hands of paedophiles all across the globe. Whether it is a developed/high-income economy or a 'demand' country like Germany or an economically middle-income/developing or a 'supply' country like Thailand, children are vulnerable to threats. However, this is not as easy as it seems and has multi-layered connotations and underpinnings. This chapter deals with the inherent mechanism of power asymmetries and exploitation present in transnational paedophile networks which enable them to exist and operate across sovereign borders. It is clear that the statistics on sexually exploited children show large discrepancies between two economically contrasting economies. Children of an economically stronger countries are better protected than their counterparts in economically weaker countries. Thus, it can be said that transnational paedophile networks originate in one part of the world and find gratification of their sexual desires and needs in other parts of the world.

This chapter seeks to uncover the plausible reasons for such discrepancies. It relooks at power and delves into all forms of asymmetries that emanate from transnational paedophile networks. Power is a controversial term as its forms and connotations vary depending on multiple factors. In certain cases, brute force (coercive capability) is seen as power whereas in the other cases it is about the ideological supremacy (suasive capability) of the most powerful actors in the international politics. As against all mainstream perceptions which state that international politics is about power, this thesis re-examines levels, nodes and network from which power emanates. From this standpoint, power is a characteristic of all social interactions and interconnectivities in the international community. Borrowing from the Foucauldian notion of power, this chapter seeks to explore the most controversial international issue of sexual exploitation of children.

The statistical record on children exploited in Germany shows that it is far less than those exploited in Thailand. Moreover, statistics regarding sexual exploitation of children in Germany grossly mix up children who are trafficked into Germany and exploited sexually vis-à-vis German children. Also, the origin and existence of paedophile movements consisting of people with an innate attraction towards children is found more in Germany. Several active paedophile groups operate in Germany and have been time and again attacked by the German state. It can be said that the existence and relatively free operation of paedophile individuals and groups on German soil is due to the liberal culture prevalent in Germany. Also, economic wellbeing creates space for the existence of unconventional demands amongst Germans. These numbers highlight that even though international politics is a game between several national and international actors, the economically weaker states tend to compromise on several fronts in their urge to grow economically.

This is not to say that developing countries do not work for protection of children, yet they tend to give priority to capital and money. Considering the ill-effects of a long colonial history, developing countries continue to believe that despite being sovereign and independent they exist for catering to the needs and demands of the West. Economically weaker countries perceive power as belonging to the West. Instead of working to redefine the existing unequal networks of exchanges, many developing countries accept them as a way of life. However, these are not as strictly stipulated norms as they appear to be. Economically weaker countries can alter these power discourses. The international system needs to objectively locate unequal meshes of power and proactively take recourse to reshaping global settings. The overarching culture of domination and subordination between developed and developing countries has prevailed for hundreds of years, providing the framework and sanction for oppression and exploitation, and is characterised by imbalances in relationships. The pattern of asymmetrical relationships between high income countries and lower income countries manifests itself in several forms. This chapter discusses these asymmetrical relations of power in general. It focuses on the emerging forms of exploitation, marginalisation and power asymmetries on the basis of paedophile networks and the process of transnational paedophilia.

The existence of paedophile groups and its growing transnational characteristic makes the relationship between countries of North and South vulnerable. In lieu of this

statement, it can be understood that unless states, especially those of the South, give due emphasis to questions of power, to the need for justice in global relationships, and to the right of a child for protection against sexual abuse, this issue will not be taken seriously by most of the people, nor enriched by their experiences and insights. It will also fail to address the question of domination and arguably help to perpetuate it, rather than for the achievement of genuinely peaceful relationships. Further, the insecurities faced by children at the hands of paedophiles will not reduce, making them easy targets across countries of the developing world.

The first part of the chapter shall discuss the idea of power asymmetries in international politics. This section focuses on three main aspects: a) Power asymmetries and the emanating North-South debates, b) Transnational paedophilia and its effect of the dichotomy of developed and developing states, and c) the broader canvas of exploitative and asymmetrical nexus of power between economically discrepant countries in constructions of childhood and child rights at the international level, and the impact of all three aspects on world politics. In the second part, this chapter seeks to examine the implications of the above-mentioned aspects of power asymmetries on global relationships with a special focus on a relational analysis of modes of interaction prevalent in Germany-Thailand network of sexual exploitation of children. Moreover, this section will also look at the developed-developing dichotomy through the prism of paedophilia and how certain states are unable to protect vulnerable sections of their society. The chapter will reflect the paradigmatic shift in relationships between countries on the issue of child rights against sexual abuse and the role that states are playing in curbing the menace cause by paedophiles. The last section of the chapter will suggest some ways to strategically manage the sexual exploitation of children both in high-income economies and middle/lower income economies.

### **Power Asymmetries: Re-looking at existing North-South Debates**

The IPE approach re-looks at all forms of international phenomenon by taking social, cultural, political and most importantly the economic criterion into consideration. It is only by taking this as the starting premise that issues of North-South debate make sense. Power asymmetries emerge between Global North and South on issues like security, trade, environment, socio-cultural dynamics and political agendas. Several



scholars have written extensively on these issues and highlighted the discrepancies between the two variables. However, this study tries to highlight power asymmetries that emerge between states in dealing with transnational paedophile networks.

The term power is not fixed or monolithic, but fluid, complex and changing in its nature. It is indeed quite hard to define it in a fixed and rigid format and thus, it has tended to be a topic of debate among scholars of social sciences. But in the context of north-south divide, 'power' could be defined as a phenomenon of exploitation. Exploitation as a mechanism of exercising power encompasses two related meanings: 1) to make unfair profit; and 2) to take undue advantage of inequalities of ability and/or economic status. Thus, if used in both senses with respect to children in prostitution, exploitation can be seen to result from the actions of both customers and providers. Thus, power lies in the hands of the country that has a capacity to exploit others and simultaneously protect itself. In other words, power asymmetries emerge from a country's inability to prevent itself from such exploitation and shape its structure and mechanisms in consonance with the demands of the more powerful.

Sexual exploitation of a child highlights the use of a child for activities that benefit sex seekers and is a source of threat to the physical, mental and emotional health of a child. Exploitation in sexual sense includes child pornography and child prostitution but it is not limited to this only. Both these terms, however, indicate that profit or benefit is being extracted by people at the helm of a child's inabilities, incapacities and strength. It is important to note that while exploitation is a relative term, power operates in the absolute form.

The common sensical understanding of the term domination is a form of power. In most cultures of the world people perceive domination as a sense of power over one another or the ability to perform on behalf of someone else (Boulding 1978: 76). Domination can be exercised in varied forms and ways like ownership of assets, use of communication, modes of interaction and socialisation, creation of political and societal mechanisms etc. Sexual violence over children is the worst form of harm that a dominator can exercise over a weaker one. It is harmful and destroys the very essence of human existence.

### *Environment and Asymmetries*

In extricating the sources of asymmetrical dimensions between the Global North and Global South, the most crucial area is environment. Environment is not a problem that affects either of the economies individually, it is a common threat and a source of constant panic for people across the globe. Whether a tsunami or earthquake strikes in Germany or in Thailand, its destructive effect will be catastrophic and devastating. Nature does not consider economic, political or socio-cultural backgrounds in the cases of calamity or natural dangers. How do power asymmetries emerge then? In studying environment and the perpetuating forms of asymmetries, one should not depend on an individual reading of the problem but an approach that takes history, politics and economics into account. Individual idiosyncrasies are crucial in delineating what role a country plays in dealing with a global problem or concern. This idea becomes the source of all forms of contention in debates over environment.

In International Relations scholarship, the Global South has brought to light the Euro-centric dimensions of decision and consensus building. The developing countries debate on global commons has attempted to go beyond the asymmetries between North and South and they ask to take a 'common responsibility' in dealing with environment and threats to it. Developing countries place this debate in the historical circumstances which favoured high-income economies due to exploitative processes like colonialism and neo-colonialism. They further argue that exploitative processes have left developing countries in a situation where they need to really work hard to develop economically, even if this means exploiting natural resources indiscriminately. Thus, against a background of their asymmetrical and exploitative situations, the developing economies situate 'common, but differentiated responsibility' as a just approach to the environmental threats. Also, resources, technology, lack of experience and other related problems are embedded asymmetries which are indicative of a setting where an economically powerful nation is better off than an economically weaker one. Thus, environmental debates show how developed countries of Global North provide foundational setting for the world's approach to environment. This is purely for strategic convenience and sharing of burden which has been caused and perpetuated by themselves. Thus, these debates become the basis of an exploitative and asymmetrical discourse among countries.

### *Social Asymmetries*

What emanates differences between two countries on the basis of social parameters? The progress of a society is measured by the work that state is able to do to engage and enrich its social capital and milieu. Based on certain indicators, a nation state is able to visualise its social strength and this in turn helps it to fulfil its role. Asymmetries between states begin to emerge based on poverty, social marginalisation and deprivation, child protection norms, employment, other social, political and institutional resources, etc. More broadly, the ability of a state to clearly define its mode of operation, rules, norms, social mores, cultural values and traditions makes up for a better conception of a state. Who defines these parameters and how?

Asymmetries begin to emerge when we look at who decides the role a state plays towards society and how should it behave. Social polarisation among countries show differential statistical outcomes. This thesis highlights that even economically developed countries are witness to social insecurities. However, their ramifications are far more disturbing in their economically weaker counterparts. Economic capacity tends to give an upper hand to states that are able to absorb social vulnerabilities due to more stable resources. A report claimed that developing countries are unable to position a stable social alignment as they have 'high population indices, unstable political environment' etc. (Morrow 2008).

Focusing on the social domain, asymmetries begin to emerge when data on social comforts are being assessed. The foremost role of the state is to provide a socially comfortable setting to its people. Social strengths are internally heterogenous and remarkably variable. Developed countries are able to coherently proliferate forms of strategic social culture which has a positive ramification on states. However, developing economies are far more cautious in creating an egalitarian social status for all its members. Access to education, women empowerment, norms on child protection and benevolence for each other find a better chance in developing countries. Yet, the problem is in its effect as such reforms could take a long time in producing the desired results.

### *Culture Asymmetries*

There is an innate problem in culture as a tool of explaining occurrences or patterns of asymmetrical relations as they tend to become tautological. In the post-cold war era,

culture becomes an explaining factor of everything that takes place in the world, even if it is contradictory in nature. It should clearly be used as ‘the explanation of last resort’ (Manderson 1995: 504). The components of culture tend to change with time (Leuchtag 1995), a totally binary explanation of a particular culture is ascertained if someone delves into its history. Thus, a form of behaviour, within a cultural setup, which seems to be acceptable at a certain point of time is not at some other point of time. Clifford Geertz in his writings points out that culture is ‘a historically transmitted pattern of meanings embodied in symbols, a system of inherited conceptions expressed in symbolic form by means of which men communicate, perpetuate, and develop their knowledge about and attitudes towards life’ (1973: 89). Scholars also define cultures as, ‘learned systems of meaning, communicated by means of natural language and other symbol systems, having representational, directive, and affective functions, and capable of creating cultural entities and particular senses of reality’ (Levine 2002).

How does one locate asymmetries by considering the above definitions of culture? Clearly, culture emanates asymmetries based on the ways in which it is constructed, the actors involved in its construction and the factors that play a role in its perpetuation and modification. (Lilakul 2003). Considering these questions about the meaning of cultural perpetuation and modification, it is very difficult to differentiate a particular form of cultural setting from another. In global politics, cultures are transmitted in two ways, vertically and horizontally. Vertically cultures are transmitted through shared understanding about one’s cultural background. Horizontally, cultures are perceived as ‘patterns of consumption’, ‘globally shared beliefs, ideas and realities’. Both these patterns of cultural transmission are based on the objectives of ‘domination and subjugation’. (Scholte 2005)

Some scholars argue that mainstream cultural ideas are interwoven with an inherent nature of placing ‘one specie over another, one culture over another and a particular sex over another’. This is what is known as ‘dominatory culture’ (Eisler 1990). Domination then assumes the characteristic of the powerful and it ascertains cultural setups for the subjugated in a manner that leads to asymmetries. Boulding (1978) points out that power in this regard assumes the idea of capacity and capability to make someone to perform certain duties on behalf of others. In global politics, this includes using power to gain control over others. Resources, capital and modes of

exchanges compel them to change their cultural setups to accommodate the demands of the more powerful.

In certain cases, cultural dominance leads to use of violence as a means of control between the powerful and oppressed. 'Cultural violence makes direct and structural violence look, even feel, right – or at least not wrong' (Galtung 1990: 291). The demands made by paedophiles are often explained and justified in terms of culture. Adult attraction to children has been expressed time and again as a part of liberal discourses on sex and sexual relationships. Mostly belonging to the dominant cultures, paedophile networks claim that sexual freedom is innate to human and Western culture. Thus, rather than constructing adults as controllers of sexual freedom of children, they invoke theories of emancipation, rooted in Western cultural contexts as a means to justify their claims.

### *Political Asymmetries*

Traditionally states have altered their domestic and foreign policies in order to accommodate more powerful states. However, the nature of interstate competition has severely altered. Trade and economy and its recurring impact on the way in which states choose one approach over another is rampant. The reassessment of priorities from military to economic and technological to humanitarian is not a result of competition but interdependence. There are multiple layers of interdependencies among states that lead to cooperation in conflict and conflict in cooperation. Thus, political asymmetries have changed contours and exist in creative and unconventional forms across the globe.

States are no longer the only actors in international and domestic politics. A 'global depoliticised space' has been created in which the political role of non-state actors, multinational corporations and other transnational actors have been envisaged. These actors and groups are at times in conflict and at times in cooperation with states in contributing to agenda building. The source of power in such a case gets distributed at several layers and nodes, yet states and state power remains dominating and overarching as these actors are used by states to perpetuate their visions and agendas at grassroots and international levels. Also, the more powerful a state is in terms of economic and political criterion, the more is its ability to use other states and actors to its advantage.

*Asymmetries based on Transnational Paedophilia: Child and Childhood*

Paedophilia becomes a 'transnational network' under four crucial circumstances. Firstly, paedophiles are able to transcend their national domestic borders and find solutions to their demands at trans-national levels. Secondly, they create mutual and perpetual linkages with people of similar inclinations and begin to actively promote their causes and concerns. Thirdly, access to children, other than those belonging to their national identity becomes easy. This is facilitated by flows, both, from their country of origin to other easily accessible places or trafficking of children from other countries to their own national boundaries. Lastly, several organised setups which include like-minded paedophiles or 'benefit-seekers' become facilitators in coordinating demands and requirements of paedophiles. However, these networks are extremely fluid in nature and secretive in their operations due to their inherent illicit demands.

The notion of asymmetries gets a further push by locating the increasing transnational characteristic of paedophilia. Transnational paedophilia has raised important questions regarding 'space' and conceptions of 'territoriality'. In mainstream theories, concept such as 'time-space compression' (Harvey 1994, Evans and Mooney 2007) and 'cyberspace' (Loader 1997) have been used in redefining the way in which contemporary states are conceptualised. However, by adopting transnational paedophilia, two alternative opinions about envisioning states are created. Firstly, sexual exploitation of children is a common phenomenon bridging the economic gap between states. Secondly, states are also territorial entities emanating the demand for economic dimension of 'space'. According to such definitions, private actors such as the market and communication technology subjugate the spatio-political dimension of 'space'. As a consequence, all the preceding conceptualisations reveal that globalisation has breached the 'cartographical illusion' (Ohmae 1995) of states. They vie for both an economic and political dimension of space in order to bridge the gap between each other.

The Hyperglobalists (Ohmae 1995, 2005, Dicken 2007, Castells 1996, 2000, Harvey 1989) foresee the declining relevance of the physical boundaries of states due to the expansion of global finance and the communication revolution. According to their analysis, globalisation subjugates the political realm to the economic domain. Such a line of thinking also finds expression in the rise of transnational paedophilia. The rise

of global media, increasing forms of interactions and social networking has enabled paedophilia to transcend borders. While examining the global spread of using child pornography through the internet, the rationale of this argument gets further reinstated. It is true that globalisation has facilitated the rise of the network society (Castells 1996, 2000) which has enabled the horizontal integration of the world across territorial borders (Evans and Mooney 2007) and resembles the de-territorialising (Scholte 2005) phenomenon.

However, we must also admit that the transnational characteristic of paedophilia has not emerged only due to the widespread use of technology. The role of ever expanding state and market, which have worked in mutually interdependent fashion in creating asymmetrical relations, has played a key role in making paedophilia a transnational phenomenon. Technology, increasing media exchanges and other such forms of transnationalisations are successful in deepening the asymmetrical relations between economies. Market forces and states operate in a reciprocal manner to make sexual exploitation of children via transnational paedophile networks possible.

An interconnected issue of transnational paedophilia is the protection of children who are willing and ready to sell sex and become commodities of enjoyment and pleasure for others. It is important to note that children selling sex face very different issues to adults selling sex, and this helps us to re-examine the issues of consent, power, and exploitation in a radically different context. Paedophile activities have increased in this present age of globalisation because of three major factors: i) the necessity and demand prevalent in sending countries, ii) the requirements of receiving countries and iii) the resulting profits, which creates incentives for all the involved agents.

Transnational paedophilia and its relation to asymmetries is based on a nuanced understanding of power. Power lurks in the background of all interstate relationships. All international relations are based on power configurations. In this regard power is usually defined as the domination of a state over another in terms of capacity and strategy. The power and capacity of a state is determined by its geographical, economic, and technological resources, its form of government, its social and ideological strengths which places the state at a particular internationally strategic position. In the humanitarian sphere, for reasons of morality, states usually do not usually exploit one another or the citizens of another state. Thus, the existence sexual exploitation of children by transnational paedophile networks is the clearest indication that interstate

cooperation is not working in this issue-area. The tacit (and sometimes explicit) policies of some developed countries in asymmetrically protecting ‘their’ children as against those belonging to developing countries makes asymmetries emerge.

Thus, this asymmetrical relationship gets highlighted when we analyse different types of sexual networks in the contemporary world. For transnational paedophile networks, access to children for sex is the essential requirement. They are hardly bothered about the origin, nationality or background of the child. Why do some societies have a greater tolerance to paedophiles than others? Are they bereft of the ability to uproot these ethically undesirable and morally unacceptable transnational networks, or do they consider them as a part of liberal discourses of freedom and emancipation? Yet, paedophiles seek gratification of their demands from children in countries that are economically weaker and culturally permeable. The next section discusses the ways in which asymmetries, oppressions and marginalisations are inherent to the existence and operation of transnational paedophile groups and networks. Borrowing from Marxism, dependency and several other IR theories, the next section tries to bring out the nuances between developed and developing economies based on transnational paedophile networks.

### **Germany-Thailand Network of Sexual Exploitation of Children**

The first question that needs to be addressed is: What is a state and what role does it play in contemporary world politics? A state is no longer a political entity having a strict demarcation of its functions and roles. Several modifications have taken place to the earlier existing views of the state. In contemporary times, it is extremely crucial to adopt a politico-economic method of visualising states. The traditionally existing notions of ‘space’ and ‘territory’ in the globalised era can be explained very well through the perspective of international political economy. The market and the states are to be seen as equal partners. Thus, states are compelled to respond to market forces and share a functional relationship with markets. States with developed economies therefore seek to transfer their burden on developing economies by influencing their agendas.

Child exploitation is the abuse of a child wherein some form of remuneration is involved or whereby the perpetrators benefit in some manner – monetarily, socially, politically, etc. Child exploitation constitutes a form of coercion and violence,



detrimental to a child's physical and mental health, development, and education. One form of such exploitation is child sex tourism through which a paedophile easily finds access to a child for gratification of his/her sexual needs. It is important to consider the factors that a country considers in allowing children to be sexually exploited. What are those factors, the presence or absence of which leads to increased vulnerabilities of children within a state? In this section, we study the Germany-Thailand network of sexual exploitation of children. The section raises important questions with regard to the asymmetrical relationship between Germany and Thailand. Why is it that German laws have such stringent implications for a paedophile in Germany whereas Thailand remains to be the most lucrative option for paedophiles?

In analysing the Germany-Thailand network of sexual exploitation, several dependency theories get invoked. There are two ways to highlight the mechanism of dependence created by German paedophiles on weaker economies like Thailand, which latently promote sexual exploitation through tourism and other means. Marxist theories unravel the politics of economic preferences in a country over other available priorities. The economic compulsions of people in Thailand compel them to accommodate the forces of paedophiles in a far more nuanced manner. Thus, the negative effects of tourism are seen as a positive implication as money flows across borders in simpler channels to satisfy one country by another. Moreover, paedophiles belong to different nationalities but generally come from developed countries, like the United States, Japan, Australia, and many other European countries. They gratify their sexual needs and preferences in destination countries like Thailand and adjoining countries like Cambodia, Fiji, the Philippines, Sri Lanka, Thailand, Vietnam, and also further afield in Central and South America. Germany is one among the several 'sending countries' that enables the international child sex market to flourish by providing a wealthy and willing customer base. However, it is not the only country that has high demand and need for markets. Paedophiles belong to different nationalities out of which 25% percent belonged to the United States, followed by Germany (16%), the United Kingdom (13%), Australia (12%), France and Japan (7% each) (ECPAT 2006).

Germany's adjustment and arrangement to this whole gamut of child sexual exploitation can be referred as a 'balancing act'. On the one hand, it has enacted stringent laws to protect children, spoken unequivocally about the rights of children and

made several attempts to ensure safety of its children. Yet, on the other hand, Germany invokes a self-conceived rational approach towards paedophiles. Germany lays down a flexible stand towards non-convicted paedophiles, focusing on their rights and treating them as non-offenders. Towards convicted paedophiles, Germany employs as tough measures as possible to avoid harm to the vulnerable sections of their society. Thus, Germany has created very strong mechanism on child rights but balances it with tolerant behaviour towards those paedophiles who are not convicted of crimes towards children.

In the Germany-Thailand context, paedophiles start sharing a common goal and vision, build common organisations and partner with one another to reach out to children. The states and international groups are well aware of these networks, as also the factors that create and sustain them. However, unlike other forms of transnational organised crime it is difficult to cut off the enablers of transnational paedophilia and cripple transnational paedophile networks. It is difficult for both Germany and Thailand to look out for agents involved in the process, the source of material and logistical support and, most importantly, identifying who is a potential offender during travel. Despite raids, instructions to brothel owners and providing a checklist of codes and norms to be adhered to, Thailand is unable to stop children from entering into the sex industry. This is because the enablers are not only rooted in state incapacity but in this fundamental mentality of its people, parents and children alike, who believe in the principles enshrined in Theravada Buddhist doctrines and accept child sex as an alternate course of life.

All countries of the globe, with not even a single one opposing it, are trying to deal with the problem of paedophiles and paedophilia in their unique ways. In their attempt to mitigate the problem of sexual exploitation of children, states and non-state actors are looking out to different options available to them. The biggest impediment or failure of states to curb the enablers of transnational paedophilia is rooted in the understanding of 'our children, their children'. As long as a German child is not being offended and abused by a paedophile on German territory, there is no incentive for the German state to carve a stringent action plan to curb transnational paedophilia emanating from German soil. Germany does have an extra-territorial legislation in place for paedophiles committing crimes abroad but the vigilance in curbing child sex offences within its own territory is far less than child sex crimes committed abroad. German

paedophiles are accustomed to penalisations and stringency of laws within their borders so they move out to Thailand to ensure sexual gratification.

Thailand creates its own balancing mechanism which is way different from Germany. It is at the receiving end and the *raison d'être* for being a host country is revenue generation and profit maximisation. In several regions of Thailand, child sex prostitution has become deeply entrenched, corruption and malpractices have riddled the country and easy escape is available even after arrests. The local paedophiles are well connected with the Royal Thai police officials and in several ways receive protection from them as well. This enables the existence and operation of a thriving child sex industry, supported by local Thai people, relying increasingly on sex-tourists and paedophiles. A wider reflection of the problem in Thailand is witnessed in its attempt to readily accept selling of child sex as a way of life. Notwithstanding this, Thailand has made all attempts to balance the rights of its children by making several legal chains to protect it against the practice of treating its children as resources and objects of sexual pleasure.

Power asymmetries resurface when we analyse the developed-developing dichotomy on grounds and parameters that deal with child rights. The differentials become visible if we examine the various social and demographic indicators like mortality rate among infants, size of families and expected life years, questions relating to bonds of care in family and residential care; opportunities like education and play; protection of differently abled children; children deprived of basic necessities like food, shelter and clothing; children who are living in safe and secure environment as against those in institutional care, on street or as refugee; rates of child abuse and neglect; number of children engaged in child labour; exact rate of child prostitution; and variations/discrepancies in dealing with children from urban/rural areas. On all these grounds, the ramifications of asymmetries and dichotomies are clearly evident between an economically developed country and a country which is in the process of economic development. Statistics show an apathetic situation in which child rights in developing economies are compromised at several levels. Physical and emotional insecurity, poverty, hunger and serious mutations of child rights is quite common in Thailand. On the other hand, German children enjoy high development indices, lower mortality rates and a strong mechanism to ensure the protection of child rights.

There is growing consciousness among transnational paedophiles that the networks that they create has perpetually penetrated into 'local cultures'. Agents who supply children, pimps and brothel owners are the supporting mechanisms of paedophiles, whose job it is to help paedophiles gain sexual access to children across sovereign borders. These 'facilitators' are well known to children, includes family and friends or even other children. Sexual exploitation of children within a country becomes a socially accepted practice when children are served on a platter for the sexual pleasure of paedophiles. In this regard, it is not assumed that paedophiles necessarily travel across borders to sexually exploit children. Paedophiles live within a domestic setup, belong to that nationality and yet travel to exploit children for pleasure and sexual gratification. However, there are three observations in this regard. First, being a paedophile in a supply country gives easy access to children for sexual exploitation. Second, having explored the markets and nodes of exchange, transnational paedophilia becomes a mode of information exchange among paedophiles across the globe. Third, these local paedophiles then assume importance at the transnational level and become facilitators of this process. Thus, what was earlier believed to be a conflict between countries now assumes transnational characteristics.

In Thailand, family members accept certain ways of life right from the conception of a child, especially with respect to girls. The culture, socialisation and upbringing of children is in a setup where night clubs, beach parties and ping pong shows are a part of their daily life. This culture then becomes the interlocutor and acts as an inclination among young boys and girls to earn fast and easy money. Sexual exploitation then becomes a profession rather than an abuse. In the morning, children go to school, do all their household chores and live a normal life in the afternoon, and in the evening, one finds them all decked up and prepared to satisfy customers in return of money. Thai children, over a period of time have accepted sexual interactions as a way of life. Having said this, children in developing countries need to be exposed to reconceptualised concerns which they consider as 'private concern' but is a source of harm to them, their society and the world at large.

The 1970s and 1980s was when countries had postulated the need for a tough stand against sexual exploitation of children. Countries like Thailand, with increasing economic benefits out of child sex tourism and child trafficking for sexual purposes, kept itself aloof of all such debates. All forms of economic endeavours were primarily

seen as advancing the interest of states from the need-based perspective. Thailand was a sufferer of poverty, deprivation, lack of funds and resources and it needed economic growth and development to make a place for itself. While the requirements of child protection norms were clearly elaborated, deliberated upon and explained, there was a lack of vigour in translating them into policy level initiatives. Over a period of time, this need based perspective has expanded and the children’s need to be protected is incorporated. Thailand has considered an indefinite and unconditional extension of protection to children from all forms of sexual exploitation both within and outside its borders. It was due to international initiatives that Thailand altered its child policy followed in initial years and tried to evade the exploitative mechanism between the Global North and the Global South (Wood 1995). With several domestic initiatives and policy building mechanisms, Thailand imposed strict laws banning paedophiles, who seek to exploit children within Thailand or through virtual interactive forums.

<b>Table 5.1: Comparison of Visa Process in Germany and Thailand</b>	
Germany	Thailand
Strong visa norms for all countries	As on 2017, travellers holding <b>UK, US, Japanese, German, French, Canadian and Italian passports</b> have 30-day free visa to visit Thailand
Tedious Visa application process with a long form requiring several details. Special Tourist Visa needs to be obtained.	Simple and Easy form. Not required for German Nationals
Application Fee of 60 Euro	No Application Fee

Source: Compiled using data from TAT, Thailand and Federal Agency, Germany

However, even though Thailand’s child policy against sexual exploitation is pro-children and its stance at all international forums is child-friendly, it has managed to sustain markets of supply to paedophiles who flow in and out of the country very easily. There are several mechanisms that make stringent application of international norms on child sexual exploitation impossible in Thailand as against Germany. Firstly, visa norms which is a uni-directional exploitative process, is a quite simple and easy process for a German who seeks to visit Thailand, unlike the vice-versa, i.e. for a Thai national to get a tourist visa for Germany. Thus, a German paedophile lands in Thailand and can take a visa for a period of 30-90 days with almost no scrutiny and a meagre amount of money. This policy originated from Thailand’s initiative to attract foreigners to Thailand for tourism and is deeply rooted in a need to increase foreign reserves. However, this move has asserted a pro-North stand and advances the interest

of paedophiles who find it easy to enter in Thailand and gratify their need/desire of child-sex.

Secondly, Thailand's definition of a paedophile and considering paedophilia as a crime is completely opposite to that of Germany. These binary vocabularies in looking at transnational paedophiles generates heated debates. Germany still has active transnational paedophile networks who actively champion liberal views about sex with children. The stand of Germany towards paedophilia as a curable mindset, a disease that needs redressal and a 'crime that needs rejection of the cause and not the person' makes a child, not in Germany but across borders, far more vulnerable. This kind of approach in Germany is in complete opposition to Thailand's consideration of 'paedophilia as a moral harm'. A paedophile is seen as a threat to society who needs immediate attention. However, despite such an understanding Thailand is unable to curb this menace because of Germany's fractured belief that makes a German paedophile a threat to children, but only outside its borders.

Further, even though Germany recognises the threats that paedophiles pose to children, it clearly signals its callousness regarding child victims of other nationalities. Once a human being is convicted as a paedophile in Germany, he/she is required by law to travel a radius of 3 kilometres in the neighbourhood and inform people about his/her identity. This word of caution is to make parents, children and care providers aware of the potential harm their child could be exposed too. In contrast, Germany has not listed 'paedophilia' in its no-fly categories, thereby not prohibiting severely penalised or heinous criminals from flying abroad. The main reason is that to Germans, paedophiles are victims of their vulnerabilities and rehabilitation can improve their mental stability.

In Germany, the punishment under the amended German Penal Code is strict. Since 1993, the government has been able to prosecute any German who sexually exploits a child regardless of the child's nationality. Under German law, it is a crime to engage in sexual practices with any child who is under the age of fourteen. Conviction for such an offence brings a sentence of up to ten years in prison. While the penalties are comparable to those of other consumer countries, the scope of Germany's laws appears limited by being inapplicable to those who organise or provide access to prostituted children. In contrast, Germany has not amended its criminal laws to refer specifically to sexual offenses committed abroad. Instead, it seems to have relied on

its laws on general extraterritorial jurisdiction to prosecute nationals for such crimes. In Germany, the extraterritorial laws were extended to cover the sexual offenses of a German against a child anywhere. This law also seems to have dispensed with the requirement of double criminalisation. As a result, German nationals may be prosecuted even though there is no comparable law in the country where the act was committed criminalising such an act. The only requirement is that the act be punishable under German law.

In Thailand, childhood is full of 'images on sexuality' and there is immense exposure to processes that consider sex as a 'liberal way of life'. The openness among the people in society make 'sex as exploitation' a hazy domain. Children in their free time help their parent in shops on beaches, in hotels, at spa centres or at points where exchange with people from other cultures is very common. Thus, the idea of childhood as a period in life with no economic or political responsibilities is not an accepted way of life in Thailand. A similar, yet different assumption, is seen in Germany where childhood is full of sexual explorations and fantasies. However, it has a different connotation and is in binary opposition to what happens in Thailand. The idea of asymmetries emerges when sexual engagement becomes a matter of choice to someone and a matter of necessity to the other. The fact that economic burden is being shared by a child is an idea that is typical to a child not belonging to developed but a developing economy. Research has shown that child prostitutes belonging to both genders sell their bodies both in developed and developing countries. In both Germany and Thailand, prostitution is legally accepted and thus selling oneself for money is not a criminal activity. This is an important indicator of asymmetrical assumption of our children and their children. However, several nuances exist when we compare the factors that push children into the sex trade.

Why is Thailand unable to protect its children and devise stringent laws to prevent their sexual exploitation? Both Germany and Thailand have drafted strict laws against paedophiles who engage in sexual exploitation of children. Although the statistics vary widely, the number of prostituted children is already far too great. Thailand has responded to the problem by enacting laws against such sexual offenders. As we have already seen, the Germany-Thailand network of sexual exploitation of children through transnational paedophile networks is not the only nexus of asymmetrical relationship between developed and developing countries. Several such networks exist

and operate in the world. Also, it is not being suggested that paedophiles do not operate within their domestic borders. While paedophiles do engage in child sexual activity even within their country's borders, they find much greater accessibility to children in developing countries.

Relatively few inroads are therefore being made into the range of injustices facing children who happen to have been born in the developing part of the world. Apart from some of the highest levels of malnutrition, the problems of children in Southeast Asia do not seem as great as those in Africa and certain South American, Middle Eastern and East European countries. For that reason, the difficulties facing children in Southeast Asia appear to have a hope of at least partial resolution. Nevertheless, the burdens imposed on children in most countries of Southeast Asia are far more than they should be expected to carry; and, without greater determination on the part of adults, these problems are likely to get worse.

While there are many powerful people both in the Global North and South who exploit children but at the overarching level the power asymmetries between victim countries like Thailand and predator countries like Germany is quite clear. Thus, in order to create an environment conducive to children of both developed as well as developing countries, the international community at large has to deal with the problem by transcending borders.

The preceding section raises pertinent questions about the role of the state in protecting the vulnerable sections of the society, in this case, children. In postulating the roles that a state plays in this global age, one needs to revisit the way in which a state is perceived. States have been perceived as 'political states' or 'economic states' (Clark 1999). The distinction between a 'political state' and the 'economic state' is based upon the goals it seeks to achieve at the level of international relations. In other words, only in those states where internalising market imperatives is important, transnational paedophile networks will be able to achieve its goal. Thailand, despite knowing the effects of paedophiles does not, or is unable to, deal with it as proactively as Germany because market forces influence Thailand's behaviour towards paedophiles.

One crucial manner in which successful redressal of sexual exploitation of children can be done is by bridging the state-market dichotomy. In dealing with transnational paedophilia, countries should develop a proper understanding of the political economy



of paedophilia. We also need to re-examine the way in which states operate. Thailand's subjugation to market forces should not be seen as a compromise. Thailand does not try to overwhelm the market, nor do market forces alone influence the action of Thailand towards paedophiles. On the contrary, state and market complement each other.

Despite being a home to several secretive paedophile groups and organisations, Germany has been able to take a stronger stand in dealing with this problem. Unlike Thailand, which considers market imperatives as the only reason why a state is unable to deal with the menace against sexual exploitation of children, Germany regards the role of states as an equal requirement in this regard. In analysing the Germany-Thailand network of sexual exploitation of children by transnational paedophiles one can easily postulate that it is easier to have access to children in Thailand than in Germany. The main reason behind this sort of an asymmetrical relationship is the flexibility in adhering to rules made by the administrative mechanism of the state apparatus in Thailand. Germany has its state apparatus well in place. It has to be understood that both the state apparatus and market share a functional relationship. Thus, the German state tries to curb paedophiles even across borders by devising modes of extra-territorial legislations. Yet, German paedophiles are able to transcend borders and reach Thailand because the Thai state overemphasises on the economic sphere and compromises on law implementation mechanisms.

Generally, developing countries are preferred as outlets of sexual gratification and satisfaction. Despite having legally accepted prostitution markets, German paedophiles are forced to look across German borders to satisfy their particular needs. Also, children who are trafficked in Germany are not children of German origin but belong to different nationalities. Thus, paedophile demands which originate in developed states impose and transplant its perpetual needs on peripheral economies, whether close to its border (like East European countries) or to destination countries like Thailand and other discussed in the preceding paragraph. The study notes that children in Germany are also prone to sexual exploitation at the hands of paedophiles but such modes of sexual gratification come with tough mechanisms of state scrutiny. Thailand is ready to absorb these consumption patterns as it sees a vicious circle of growth, the higher the rate of growth, the more it is ready to overlook these dependence structures. It is unheard of for German children to be trafficked into Thailand for the purpose of sexual exploitation at the hands of paedophiles. Compared to their Thai counterparts, German children are

clearly privileged. The uni-directional interaction indicates asymmetrical relations between Germany and Thailand.

There have been several attempts by Thai state, bureaucracy and other institutional apparatus to deal with this model of exploitation, oppression and marginalisation. This is clearly evident by its tough stand at the level of norm making both at the domestic and international front. This ingenuity is to some extent attributed to people as well who engage in unethical means to procure money. This also relates to the asymmetrical distribution of wealth within Thailand itself. Places like Phuket, Pattaya and Bangkok become pockets of capital and resource concentration. Children from subaltern or peripheral places enter these locations in search of money. Thus, capital and sustainable resources available in these places attract children and parents to adopt sex as a means of survival. Not only this, Thailand also attracts children from neighbouring countries like Laos, Cambodia etc. to provide sexual services and gain money. Thus, this network of exploitation permeates 'periphery within peripheries' and also leads to the idea of 'core within periphery' and 'periphery within core'. Transnational paedophile networks lead to 'clash of discourses'. In Germany, paedophiles are seen as victims. Thailand does not consider its children as victims of oppression. Children in Thailand have accepted sex-tourism as a way of life. German children also become targets of sexual exploitation at the hands of paedophiles, several times even without realising it.

### **Reworking Transnational Paedophilia in the Right Way: Limitations and Strategic Recommendations**

For the last five decades, the world at large and Germany in particular has tried to dismantle transnational paedophile networks and deal with sexual exploitation of children in Thailand by paedophiles. Despite several policy initiatives both states have not been able to do much about this problem. Even market imperatives and modulations have not made remarkable progress in dealing with the sexual exploitation of children. One plausible reason for the inability of states to deal with this problem despite being a signatory to all the international treaties and norms is that the state gives priority to demands of the market. Both the state and the market act in unison to produce networks of exchanges which are exploitative in nature. The existence of paedophile rings and networks establish that states and market operate interdependently in the global era. The international political economy of transnational paedophile networks offers plausible solutions to numerous questions which the globalisation debates fail to

resolve. The reason behind such a claim is that even though the transformationalists (Held and McGrew 1999) recognise the relevance of both states and markets in the global era, and project a case for state transformation, yet it does not reveal the process through which this transformation is taking place with considerable precision. Furthermore, some of their arguments on the role of states tend to echo the sceptics (Held and McGrew 1999) worldview. By accepting this as basic premise some strategic recommendations can be postulated in dealing with the emerging trend of Transnational Paedophilia.

*a. Recognising the meaning and implications of Transnational Paedophilia*

In current literature, the word ‘transnational paedophilia’ or paedophilia has been used only in the realm of psychology. Tautological references have been made to child sex abuser, child sexual exploiter and paedophiles in order to explain the perpetrators of sexual exploitation of a child. However, it is of chief importance that transnational paedophilia should be recognised as a separate and valid concept while referring to the problem of sexual exploitation of a child. Transnational paedophilia is about a group, network or association of self-perpetuating individuals who operate at transnational level to have or facilitate sexual access to children. This further aggravates the ever-increasing concern of child protection against sexual exploitation. In this regard, viewing it as a separate domain of concern helps in identifying and nipping those nodes, which help in forwarding the claims that paedophiles make. As these networks operate transnationally, they create a temporary pattern of exchanges. When a country seeks to find these rings, it needs to understand the root causes of such exchanges and work at eliminating them as well.

Transnational Paedophiles use the commercial weakness of supplier countries to satisfy their needs and demands. This leads to a perpetual market incentive and economically weaker countries seek to oblige these demands. Communication has become the magic wand of paedophiles, increasing social networking sites make connections and transfer of information about one part of the world to the other easily accessible. As already highlighted in the first chapter, not all paedophiles engage in crimes against children with the same intensity. Thus, some paedophiles escape scrutiny mechanisms as they may not necessarily engage in sexual exploitation but only facilitate it.

Thus, while attempting to insulate the problem of sexual exploitation in networks, the state should understand the main aims of these groups. The state needs to objectively and subjectively weigh the rationales that are put forward by transnational paedophiles and how they protect themselves from detection and prosecutions.

b. *Inclusive Model- 'Identifying the real perpetrators of the problem'*

The patterns show that demands originate from economically developed countries and people in developing countries cater to it in a need for economic gains, wholly or in part by illegal means. There is no single perpetrator in promoting the demands and needs of paedophiles. State, market, cells, networks, families and most importantly the 'child' as a victim also play a crucial role in its perpetuation. In this regard, as children are seen as dependent sections in society, the state should create awareness denoting all negative connotations of pushing children into such sexual relationships and sexual exchanges. This sort of a top-down and bottom-up approach will help in tackling the problem. The horrific implications of such engagements, though well known to the victims is clearly overlooked because of a typically 'not me' approach. The children along with family members think that the negative consequences of sexual exploitation are not going to affect them. The state should make several endeavours in building a more pragmatic understanding among its people.

c. *Liberal culture needs to have some ethical barriers*

As always, the Eurocentric view of explaining transnational paedophilia makes the whole process of dealing with sexual exploitation of children fall flat. In this regard, Germany and other countries of Global North need to accept the role that their culture plays in perpetuating such demands. Countries with high economic capacity tend to engage in activities that are unconventional, based on liberal discourses and the need to create post-modern moments. Thailand, in the process of becoming a developed economy and dealing with post-colonial complications and stress then becomes the supplier to demands emanating from Germany and other developed economies. Given this trajectory, the only possibility in dealing with such processes of marginalisation is a conscious effort of high income economies in redrafting their needs and necessities. The Global South needs to re-prioritise its people over market or economy.

d. *Action plan for developing countries*

Developing economies need to consider two points in formulating an action plan in dealing with the sexual exploitation of children. First, it is a well-accepted fact that the problem of sexual exploitation of children is one among the several problems that countries with weaker economies face. Secondly, not all areas within a country are riddled with malpractices or problems related to sexual exploitation of children. Thus, traditional means of assessing the impact of transnational paedophiles on children would become far more pragmatic if states identify the pockets of child sexual exploitation within its borders and deal with them one at a time. Also, if a state is instrumental in separating sexual exploitation of children from mainstream problems faced by a child, then it would be able to curb claims of transnational paedophiles far more constructively. In this regard, it is postulated that solutions to problems faced by Thailand, or other exploited countries will only come if they are able to indigenously deal with their priorities and problems.

*e. Relooking at vision and objectives of Stakeholders*

In postulating this measure, it is crucial for all stakeholders to revamp their objectives and visions in dealing with transnational paedophile networks: First and foremost, stakeholders need to understand that an international, bilateral, multilateral and national consensus on considering transnational paedophilia as a crime is extremely crucial. By doing this, a universal understanding will be built and this will help in creating concrete partnerships and alliances in combatting these networks. A common legitimate stand against these paedophile networks will not only act as a mechanism of pressure, but also motivate different agencies, nodes and local facilitators in changing their notions to a more pro-child orientation.

Secondly, children need to become the interlocutors in locating as well as dealing with paedophiles who are generally undetectable. In this regard, states need to draft a pro-child model of social engineering where factors that tend to push a child into such criminal exchanges can be dealt upon. If care providers were to adopt this approach, children would become radars in easy identification of paedophiles. Also, if catering to demands of the child sex seeker can be stopped, there will be high level deprivation of paedophiles and critical resources, leading, sooner or later, to these networks being dissolved.

Thirdly, the cause of perpetuation or supply by certain economies needs to be nipped in the bud. Economic benefit is the sole attraction of victims to choose being exploited. If stakeholders shut down this payoff mechanism then the capacity to deal with this problem will be immense. Peripheral areas tend to supply to cores, illegitimate access to vulnerable sections as it boosts their economy. Thus, this very notion needs to be altered. The moment economic payoff is separated from this heinous act of oppression and subjugation, sexual exchanges between children and adult could be mitigated.

Fourthly, from the vantage point of paedophiles, it is of the foremost requirement that one stops treating it as a psychological or biological disorder. It is very important for all countries to toughen their stand against paedophile groups and paedophile networks. By taking recourse to a softer paedophile policy, states give them an indication that it is natural to have such sexual fantasies. Despite being a liberal and humanist way of dealing with a criminal mind-set, this approach needs to be revisited as its implementation in a country with several other shortcomings is difficult. Thus, sensitive approach needs to be coupled with a strong action plan.

Lastly, the basic role of a state is to protect, provide safety, peace and prosperity to all its people. Keeping this in mind, state needs to sharply reject all structures, forms, institutions and relations that perpetuate harm, fear, aggressiveness, violence and insecurity amongst its people. Transnational paedophile networks are those mechanisms that garner negative feelings amongst people. Keeping this in mind, any node, network, organisation or structure that instil these damaging attitudes need to be rooted out in all possible ways.

## **Conclusion**

The broad directive that the study of Germany-Thailand network of sexual exploitation gives us is that economic incentives are not the only variable in perpetuating transnational paedophile network. It is biological, psychological and economic needs of an individual coupled with culture, social beliefs and commonly shared understandings about things that supports these networks. Nevertheless, whatever the supporting factors are, there is an unquestioned stance that power is used in subtle senses in perpetuating transnational exploitative paedophile networks. These networks invariably direct their causes to children in easily accessible countries such as Thailand.

Moreover, it can be reasoned that in the context of two powers – one developed and satiated and the other developing and expanding – the plight of children are to some extent common but worse in the latter countries. Instead, it would further deteriorate the situation of children belonging to developing countries as they do not sense this process as one of marginalisation or exploitation. In addition, power, if analysed at global level, is in the hands of those who are able to dissipate this notion of exploitation by building subtle forces of benefits and profits. Thus, in the process of getting unethical requirements fulfilled, asymmetrical relations would become further strengthened.

The operation of transnational paedophile networks rework discourses of power. Power now is not between states but even within states. In order to gain more and more power, developing countries themselves tend to become exploiters of weaker economies. A connecting nuance emerges when elites within developing countries do not push their own children within such exploitative processes. Thus, power and asymmetries reinforce structures of exploitation which make the process more complex.

## **CHAPTER 6 – CONCLUSION**

### **Analysis and Findings**

The inability of mitigating child sexual exploitation by paedophiles is tied to the threads of state and market at far end of the same side. It is the difference in their perceptions towards children both at the macro- and micro-level that gives rise to a systemic failure in dealing with the problem. While the state is hardening its stand in order to protect children, incentives of market are making actors willing to negotiate and create a space of compromise and manoeuvre. In the realm of market, money serves as that inspiration and attraction which leads to the breach of trust between an adult and child. Meanwhile, even if states engage in creation of protection mechanisms, the imperatives of market compel them to compromise on an honest implementation of these mechanisms. The behaviour of states in dealing with the sexual exploitation of children characterises a fundamental problem in international political economy (IPE).

The thesis has reflections and resonances of several IR theories in making sense of the problem of transnational sexual exploitation of children by paedophiles. The contribution of each of these theories helps in a better understanding of the problem. No single theory is pitting against the others in this project, but each of them is contributing in its own way in enriching the understanding about transnational sexual exploitation of children by paedophiles. In discussing the power relations and the existing practices of state protection, realist theories are applicable. By looking at the global flows, networks, chains of receiving and sending services a neoliberal understanding of IR has been used to make sense of transnational paedophilia and its impacts. The study also explores the realm of agency and identity to understand Germany-Thailand network of sexual exploitation of children.

The study invokes the constructivist school of thought when touching upon elements like culture and identity. Germany is deeply guided by its ethno-cultural identity in dealing with children. In practice, it is highly particular of protecting children who belong to the German origin as against children who are of other ethnic and cultural backgrounds. This is further reflected in other European countries like France, Italy, Spain etc. in which ethno-cultural dimensions do hold as much importance as it does in case of Germany. Children of German origin within an economically stable and comfortable setup are protected from paedophiles in every possible way. Thus, German identity, based strictly on ethnic considerations is very possessive in the treatment of



its children. Whereas a state like Thailand invokes religious identity and socio-economic identity as a means of explanation to the existence of child sex industry. The Thai child becomes an object and resources that helps in sustaining the Thai economy also, the liberal ideals of Buddhism, coupled with a deep sense of commitment of people to religious principles become plausible explanations of continued existence of child sex industry.

A number of questions were outlined at the beginning of the study to make sense of the child protection policies against sexual exploitation by paedophiles of the two countries and also to trace the discourses that underpin these. The broad theme was to look at how certain states, even though they have the sovereign right and capability to restrict outsiders to behave in immoral ways within their domestic borders, are unable or unwilling to do so, and how paedophiles belonging to developed states behave irresponsibly and even criminally not within their states but elsewhere. Despite persistent efforts by international organisations, non-state actors and states, not much has been done to prevent transnational child sexual exploitation. Some other questions were also raised: How does the interplay of developed and developing economies create alternative conceptualisation of 'childhood' and 'child sexual rights'? How does power dynamics reconfigure in the 21st century? Does it put state and market on the same pedestal? How does transnational paedophilia redefine the inter-relationship between two contrasting economies of the world?

It is evident that the contemporary international world order is characterised as a modernised, prosperous and glamorous arena that is deeply intertwined with multicultural, democratic and liberal values, scientific and technological advancements, reduced rates of violence (Pinker 2011) and systematic measurements for evaluating growth and development. The state articulates several policies and ensures a just distribution of resources within this market-based cosmopolitan worldview and these policies aim at securing holistic growth and development. As two contrasting economies, sovereign and independent, Germany and Thailand consider child protection against sexual exploitation a priority. The asymmetries emerge in the responses of the state towards paedophiles and their recurring threats to children. Their approach in governance of paedophilia is consistent with their history, socio-cultural setups and economic and political identity. Thus, the combined identity based on the

above-mentioned parameters is the source of reference underpinning their approach to child protection policy.

The thesis has placed the constitution of child rights discourses as processes of construction involving dynamism. Alternative reading of child emerges if one looks at both Germany's and Thailand's approach to children and the placement of the child within their respective societies. It is evident that Thailand takes into consideration aspirations and requirements that suit its domestic variables. Germany enshrining western perspectives and beliefs, speaks of a different consideration in perceiving who is a child and what its requirements are within the international world order. Internationally, children have been discursively constructed on different platforms, their rights have been elaborately guaranteed and several mechanisms for protection have been devised. It has been universally accepted that the child is a bearer of rights and deserves protection from a variety of threats including paedophilia. In this regard, two opposing narratives emerge, one in which the internalisation of the norm is highly dependent on the applied frame of reference. If a country has a rigid domestic understanding, its ramifications are different from a country where liberal views of sex are employed. Opposing this is the fact that child rights in general and child protection from sexually exploitative processes in particular becomes a referring discourse through which a particular reading of child rights identity is reinforced. The second narrative employed coherently with the first would lead to an assertive representation of child rights.

The child sexual exploitation will continue to exist in the world until and unless dichotomies based on identity end. Identity, based on 'our' and 'their', wherein a child is considered as belonging to a nation, serves as a site for making invalid claims about protection. By looking at the way child prostitution, child pornography and child trafficking is practised in Germany and Thailand, it becomes clear that states use children to reinvoke dichotomies based on identity to be lax in dealing with children at the level of legal implementation. Germany, deeply rooted within a history of German ethnic superiority uses it, not vocally but latently to discard its responsibility in preventing German paedophiles to cross borders and sexually exploit children in Thailand. It goes on to show that by not creating and imposing rules such as no-fly norms etc. on convicted paedophiles, the German state is not engaged in extending its ambit of care, even if at a mundane level, to outsiders.

In Thailand, two alternative narratives of child identity, 'our' and 'their' compete and complement assiduously. In the domain of child sexual exploitation Thailand appears to be working ardently for children of Thai origin by making laws, sanctioning international treaties and initiating several precautionary measures and programmes. However, it gets complex when layered distinctions get resurrected, first among Thai children, on socio-economic parameters where those belonging to higher economic backgrounds are kept away from the sex business (unless by choice or kidnapped etc.), and second, when Thailand allows and attracts 'their' children (those belonging to neighbouring weaker economies) to sell their bodies and engage in sex. These two completing ideas have very recently made their appearance in the way Thailand treats children within its child policy initiatives.

The articulations of child and childhood has been presented on a set of diverse scales and view-points. Amidst rising questions of a just society catering to the needs of child and childhood, alternative discourses have emerged. In the history of human society, childhood is a phase prior to adulthood and it is the process of becoming. For mainstream theorists, childhood is a vulnerable phase, a child is exposed to different threats and a moral bearing is required to control and manage these threats. These arguments are in some ways challenged by liberal discourses which consider liberal views on sex as an inevitable means for regeneration of childhood threats. To them an open society comes with a protected child. In contrast, the paedophiles talk about child and childhood as stages of exploration. The ideological manifestation of consent to have sex is highly nuanced for them. Sexual liberty to a child is considered as an essential manifestation of a child's autonomy and independence. Thus, the multifaceted understanding of the identity of child and childhood and the rights they possess would continue.

As highlighted in the second, third and fourth chapters, the international acceptance of child rights, having a universal bearing, is accepted both in Germany and Thailand. However, discrepancies emerge when norm against child protection is selectively employed into the legal frameworks of both these countries. In Germany, the authoritative acceptance and internalisation has a different repercussion on child safety in relation to Thailand, where authoritative and consciously internalised international standards are varied yet sparingly implemented. In recent years, Thailand and Germany have initiated and ratified several regional policies. This reflects a pro-active stand

against regional manifestations of paedophile trajectories over children. Germany and Thailand have invested unscrupulously in drafting a strong regional policy to combat sexual menace against children. While on the one hand, Thailand, a southeast Asian country involves itself in delegitimising adult-child sexual relations, on the other hand, it is patronising economic growth and development as outright objectives of the state. Germany as a member of the European Union and adherent to conventions, treaties and protocols of Council of Europe, reiterates a regional commitment based on territorial space and cultural specifications rather than economic credentials.

Subsequently, given the cases of Germany and Thailand, some presuppositions were made on the basis of the reviewed literature. Firstly, while the child as a bearer of rights against sexual abuse is a universally adopted norm, in practice the standards of child protection are varied and differentiated. Secondly, transnational paedophile networks redefine power asymmetries by imposing their needs and desires on unprotected children of poorer countries. Thirdly, paedophiles in Germany shift their focus to countries like Thailand where the domestic law enforcement mechanisms are fragile and fraught. Finally, the German state laxity in allowing their nationals to move outside their borders and have sex with children is selective and uni-directional. Thus, these pre-suppositions about countries showed the operation of asymmetries based on power in the international system and the reasons why did both states engage in a behaviour which is characterised by exploitation, oppression and power/capacity asymmetries.

This study has pushed for a reconsideration of power asymmetries that are exploited by transnational paedophile networks. As argued in the introductory chapter, a common perceptive approach to international events could allow an expansion of the range of possibilities that new actors have brought in the international system. It was argued that the international structure gets heavily reconfigured in the state-market dynamics creating its own rules of engagement. By choosing mainstream theories as points of explanations, such processes of interaction remain part of silent discourses. A critical reading, however, allows us to appreciate the process through which a new agent makes sense of the international system. The new actor invokes within an international political economy, understandings that challenge objective considerations and engagements. Power then makes sense by investigating new nodes and systems unlike traditional patterns and experiences. Power becomes both a perspective and response based on how it reconfigures the system through its inherent dynamics.

Transnational paedophilia involves transactions between the powerful and the powerless. It is an exploitative process of 'exchange' between an adult who has far more physical power in contrast to a child who is physically less powerful and lacks emotional maturity. Thus, power preponderance is an inherent characteristic of paedophilia. At the next level, inherent power discourses resurface when emergence, spread and modes of exchanges within processes of transnational paedophilia are considered. By analysing history, it is evident that paedophiles originate in economically developed societies and continue to mobilise within these societies. Thus, power resurfaces at a second level when these economically dominant countries open up spaces for liberal discourse on paedophilia. Finally, a contemptuous notion of material power gets re-invoked when paedophiles originating in developed economies use 'structural compulsion' and pull developing countries into the exchange mechanism.

Germany and Thailand relate to each other through several networks and processes. Both countries are tied to the logics of international political economy and behave oppositely to its implicit dynamics. There is a stark difference in attitude to the relationship between the German and Thai state vis-à-vis vulnerable sections within its respective societies i.e. children. The temporal gap in the protection mechanisms of a state towards its children, is no more limited within its domestic walls, but easily evident by the differences in treatment of children in asymmetrical international systems and setups. Transnational paedophilia is one such system, working latently, but making its ramifications felt quite clearly in the international order. In case of both Germany and Thailand it can be discerned that their children's vulnerability at the hands of paedophiles is related to international political economy. Yet, asymmetries begin to emerge, in a complex form and are heavily multi-layered when we analyse the Germany-Thailand network of sexual exploitation of children.

Traditionally, paedophiles encouraged adult-child sexual relationships within their own countries, which had developed economies. The rise of transnational paedophile networks is a worldwide phenomenon mobilising and reconnecting itself with all quarters of the world to assure gratification of demands for sex with children. In such networking channels, the developing economies, in this case Thailand, become actors willing to negotiate a space of manoeuvre and cater to demands of paedophiles, belonging to developed economies, in this case Germany, for implied benefits and

gains. This creates a further mesh of asymmetries when Thailand itself becomes the attractor of children from neighbouring weaker economies to sell themselves to earn a living. The contribution of Thailand alone to the creation and sustenance of child sexual exploitation within the international system is open to debate, but as a sex economy, it definitely entices different stakeholders to engage in sex with its children. Meanwhile, Germany's strict adherence to laws and creative ways of dealing with paedophiles has made it successful in reducing the menace within its borders. This achievement made possible the redressal of a historical problem faced by German children but led to a far more vulnerable situation of children in Thailand.

Further, transnational paedophile networks serve as mechanisms that reinvoke power asymmetries forcing Thailand, a weaker economy to compromise on its subservient claims of child rights and protection. In Chapter Four, it was seen that Thailand has time and again changed its child protection policy to accommodate pragmatic considerations and changing requirements for protection of children. The statistical inputs given by NGOs and other alternative voices are taken into account in matters of children's protection policy. However, the chapter highlights that threats to children continue to be present. It appears that Thailand has differential standards about morality and ethics. The theoretical ideational chastity of a nation in preserving children from paedophiles is one thing and doing so in reality is another. In Thailand, two alternative narratives about childhood compete with each other. First, children of Thai privileged families are protected from threats and have ensured access to basic rights. Second, those from underprivileged backgrounds within Thailand who are treated as commodities to be used and served for profitable mechanisms. Significantly, while Thailand enunciated a pro-child identity through its stringent stand for all children, it overlooked practices that equally exercise a considerable influence on reality and its implications.

### **Limitations of the Study**

The attempt in this thesis is to analyse asymmetrical approach of states towards child protection against sexual exploitation. It departs from only making conjectures about the behaviour of these states and focusses on understanding the inherent politics of the process itself. Transnational paedophile networks, how they emerge, exist and operate is highly secretive. This becomes a major limitation in terms of the authenticity of the work. Individual websites declaring their concerns, desires, aims and objectives then

become the source of study. Also, identifying child sex prostitutes is a major hurdle and most of them tend to be reluctant in sharing their experiences due to fear of being caught by law enforcement or pimps in the sex industry.

In the chapters on the respective child policy discourses of these two countries, the thesis has attempted to narrate how the idea/ideas of childhood came about and how child protection policy became an entrenched discourse. However, in doing so several variables have been incorporated and there may be some variables which were overlooked. Apart from geography, history, economy, socio-culture and politics, there could be other variables that have important bearing on children. But as these considerations are eminent and impossible to be overlooked, debates about childhood discourses would become further limited.

Further, transnational paedophile networks are unrecognised concept in global literature. The focus on transnational paedophilia as networks of power asymmetries is an unrecognised concept in international, regional and domestic discourses. Currently, it is accepted that paedophilia is a universal problem and locating its position within a particular country is impossible. This leads to the emergence of 'transnationality' where the paedophiles of one country influence and are influenced by global networks and forums. However, these transnational paedophile networks have not received recognition in international policy and analytical circles. Despite having an overarching presence in the globalised world, issues of transnational paedophiles have not been considered. This acts as both a limitation and strength of the thesis. Its limitations are mitigated by the fact that literature on the concept of transnational paedophilia is itself limited and, in some cases, sparse.

It is difficult to assess, the quantity of children trafficked for the purpose of being used for sexual engagements. Most of the cases in trafficking reflect the weakness on part of the receiving state in preventing percolation within its borders. In such countries, where children are trafficked, the numbers are generally manipulated to protect the state's image. With such shortcomings, it is often difficult to gain exact quantification about the trafficked children. Also, immigrants who do not have proper documents do not give correct details and are extremely reluctant to cooperate. Further, the intent of the research survey conducted was to focus more on the Germans available in Thailand during the course of field trip. However, given the nature of the topic, the situation, and the way in which the information was taken, respondents gave a response that was

random and born out of their spontaneous thoughts. In the case of non-Germans, their ideas were influenced by an urge to portray themselves as what is understood to be normal in mainstream understanding. Respondents could have given and revealed notions and opinions at the face of it and not by considering the agenda of the research. Thus, the sensitivity of the subject is one of the methodological shortcoming of the research. The data used in the research is therefore not representative of the actual situation. Moreover, the objective of the study was to explore transnational paedophile networks which cannot have any referential dimensions.

### **Present Relevance**

In terms of the current thesis, a few observations can be made. The narrative of child protection policy in the current global context has been severely reconfigured by new exploitative forms and processes. A relocation of childhood has explicitly sought to change the existing notions of a child and child rights. The child as a bearer of rights and childhood as the phase of innocence gets severely challenged. In this phase, countries have sought to distance themselves from their earlier legacies of childhood as a phase of ‘innocence’ and ‘play’. The new sources of threat are bigger, which have become dominant when questions of benefit, profit and advantages also become subjects relevant to a child. A new identity of child is conceived, driven within specific discourses of paedophilia. Thus, the reasons for such altering constructions is properly analysed and scrutinised.

In Thailand, the sexual exploitation of children continues to exist within the tripartite framework of child prostitution, child pornography and child trafficking. Thailand has not been able to formulate a pragmatic policy as in the case of Germany. This study points to how Thailand continues to market itself as a paedophile friendly country. In the case of Germany, the question of child protection has been properly dealt with. However, it still does not stop its convicted paedophiles from travelling to other borders to sexually exploit children. This is yet another indication that power asymmetries have very deep connections with the origin, operation and continued existence of paedophilia.

Another important aspect regarding the scope of the thesis is looking at Germany as a case study among European as well as non-European countries in dealing with paedophiles. It talks about the rights of paedophiles as victims of psychological disease and distress and yet this has not assumed a definite form as against other countries of



the world. This point goes on to point towards the approach of a developed state towards offenders and its impact of child protection policy. The question of children's rights is balanced against the right of paedophile which indicates that ethno-cultural identity is very closely tied to national policy.

### **Scope for Future Research**

Despite locating itself in a Foucauldian reading of international structure, the study only discusses the broad contours of this paradigm. This was done to situate the study within a broad theoretical structure. However, the paradigm itself has not been fully developed in the thesis. Partly, because for the specific purpose of this study, it was not required. Furthermore, a Foucauldian engagement with IR is still at a nascent stage and needs much more committed work. This thesis, however, also indicates the possibilities of future work in this regard and new insights that can be gained on structure-agency debate by drawing on Foucault's work.

Another part of the story, that in fact would be a more novel contribution to the literature from this thesis, was the conceptualisation of transnational paedophilia. The paucity of literature on the concept in global literature is highly regrettable. Mostly, it has to do with the problems of access to literature. Nevertheless, this thesis has made some preliminary steps in narrating the evolution of the term transnational paedophilia within the perspective of IPE. Moreover, there is also a great dearth of literature on the detailed study of child rights mechanisms and arenas of engagement in both the countries. Thus, this sort of engagement requires much more than the work of a single research scholar. Thus, three points are worth stating here as a part of the final conclusion. First, practise of child protection is varied, differentiated and gives rise to dichotomies which challenge the universal claim of child as a bearer of rights. Mainstream approaches are not equipped to make sense of this emerging trend until and unless inter-disciplinary studies are given importance in IR. Second, transnational paedophilia, formerly ignored within the realm of IR is a crucial phenomenon that provides a means to make sense of the world and brings to the fore several issues ignored with the purview of state and society, particularly in the last decade. Third, in order to concretise the agenda of child protection against sexual exploitation, more than the creation of abstract legal mechanisms, realities of power dichotomy needs to be looked into and seriously worked upon.

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(\* indicates a primary source)

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## **APPENDIX-I**

### **IMPORTANT DEFINITIONS**

<i>Child</i>	Human beings under the age of 18 years, provided that the domestic law applicable to the child majority in respective country is lower and attained earlier (UNCRC, 1989: Article 1)
<i>Child Sexual Abuse (CSA)</i>	<p>Engagement of activity having sexual orientation with human beings lower than 18 years, unless specified otherwise. It is perpetrated by an adult and includes activities like rape and molestation, pornography, and exposure of children to the sexual acts of others (National Clearinghouse on Child Abuse and Neglect Information 1996).</p> <p>The imposition of adult erotic desires forcibly or against that person's will; or in situations where a person's will have not yet been contrived or the being is not capable of consenting due to temporary or permanent mental or physical incapacity. (National Incident-Based Reporting System [NIBRS] as cited in Snyder 2000:13).</p> <p>The engagement, practice, influence, encouragement, act of temptation, or compulsion of a child to engage in sex or indirectly assist other person to engage in any conduct sexually explicit of sexual conduct to create material having a visual depiction of such conduct (National Clearinghouse on Child Abuse and Neglect Information 1996)</p> <p>The act of intentional sexual exposure by parent, teachers, friends, care providers and other related people for the purpose of sexual satisfaction.</p>
<i>Child Pornography (CP)</i>	<p>Films, videos, magazines, writings, photographs, computer image, or other materials produced by either adults or children, or both, that contain sexually explicit images of children and youth under the age of 18 years.</p> <p>Child pornography often has considerable commercial value; typically, though, child pornography is "traded" or exchanged between paedophiles rather than sold.</p>
<i>Child Prostitution (CPR)</i>	The act of engaging in sexual intercourse or performing other sex acts with a child in exchange for money, clothing, food, shelter, drugs, or other considerations (World Health Organisation, 1996).
<i>Child Sexual Exploitation (CSE)</i>	A practice by which a person, usually an adult, achieves sexual gratification, financial gain or advancement through the abuse or exploitation of a child's sexuality by abrogating that child's human right to dignity, equality, autonomy, and physical and mental wellbeing, i.e. trafficking, prostitution, prostitution tourism, mail-order

bride trade, pornography, stripping, battering, incest, rape and sexual harassment (a la Hughes, 1999).

CSE reflects a continuum of abuse ranging from child sexual abuse to child sexual exploitation to the commercial sexual exploitation of children.

*Commercial Sexual Exploitation of Children (CSEC)*

The sexual exploitation of children of children (SEC) entirely, or at least primarily, for financial or other economic reasons. The economic exchanges involved may be either *monetary* or *non-monetary* (i.e., for food, shelter, drugs) but, in every case, involves maximum benefits to the exploiter and an abrogation of the basic rights, dignity, autonomy, physical and mental well-being of the children involved.

*Exploitation*

Unfair, if not illegal, treatment or use of somebody or something, usually for personal gain.

*Hebephile*

An adult with sexual desires and arousal fantasies that often culminate in sexual acts with pubescent children of the same or opposite sex.

*Pederast*

Men with sexual desires and arousal fantasies that often culminate in sexual acts with pre-pubescent boys.

*Paedophile*

An adult with sexual desires and arousal fantasies that often culminate in sexual acts with pre-pubescent children of the same or opposite sex.

*Pimp*

One who promotes and/or profits from the sale and/or abuse of another person's body or sexuality for sexual purposes, or the production and/or sale images made of that person, e.g. trafficker, pornographer, brothel madam, third party manager, talent director, mail-order bride agent, prostitution tour agent (Hughes, 1999)

*Pornography*

Films, videos, magazines, writings, photographs, computer images, or other materials that are sexually explicit and intended to cause sexual arousal in the viewer.

*Predator*

One who exploits conditions of inequality to buy and/or abuse for personal sexual satisfaction those with less power, e.g. john, punter, buyer, client, customer, trick, paedophile, rapist, sex offender, child molester, pornographer (Hughes, 1999)

*Prostitution*

The act of engaging in sexual intercourse or performing other sex acts in exchange for money or other considerations (e.g., food, clothing shelter, affection, etc.).

*Sexual Exploitation (SE)*

A practice by which a person achieves sexual gratification, financial gain or advancement through the abuse or exploitation of a person's sexuality by abrogating that person's human right to dignity, equality, autonomy, and physical and mental well-being; i.e. trafficking, prostitution, prostitution tourism, mail-order-bride trade,

pornography, stripping, battering, incest, rape and sexual harassment (Hughes, 1999).

*“Survival Sex”*

Many youths involved in the exchange of sex for money or other considerations (e.g., food, shelter, drugs, etc.) do not perceive themselves as engaging in *prostitution* but rather as doing “whatever is necessary” to ensure their survival. For purposes of this study, however, “survival sex” and “child prostitution” are understood to be the same phenomenon and the terms are used interchangeably.

*Sex Tourism*

Commercially organized travel and related services (e.g., hotel, transportation), usually across international borders, for persons seeking to engage in sex with citizens of other countries, including children who are citizens of those countries.

## **APPENDIX II**

Dear Respondent,

This survey is part of my thesis entitled '*Transnational Paedophilia and Power Asymmetries: A Study of the Germany-Thailand Network of Sexual Exploitation of Children*'. As a part of my Ph.D., this study will be submitted at Jawaharlal Nehru University, New Delhi.

All questions are attempting to collect data, information and facts on the idea of paedophilia against the backdrop of international politics. It seeks to locate the patterns of asymmetrical relation between developed and developing countries based on the phenomena of Transnational Paedophilia.

It is important to note that in my thesis I define 'transnational paedophilia' as networks of adult members of the society who work together for sexual access to children, both at the national and transnational level. The term transnational conceives identity from the perspective of international political economy. On the other hand, paedophiles are adults who are consistently lobbying for abolition of age of consent laws and allow sexual rights to children. However, not all child sexual abusers are paedophiles.

Only the author and supervisor will handle all anonymous responses and confidentiality will be maintained throughout the period of research. If you wish to personally contact me or have any other information to share, kindly email me at [shilpa.asopa@gmail.com](mailto:shilpa.asopa@gmail.com).

Thanking you for your support and answers

Regards,

Shilpa Asopa  
PHD scholar  
Jawaharlal Nehru University  
New Delhi

## Questionnaire for Survey

### Overall

1. What is your gender?
  - a) Male-
  - b) Female
  - c) Others
  
2. Age:
  - a) Between 18- 25
  - b) 26- 35-
  - c) 36-45
  - d) 46-60
  - e) Any Other \_\_\_\_\_
  
3. Nationality: \_\_\_\_\_ -
  
4. Sexual Orientation:
  - a) Straight
  - b) Gay
  - c) Bisexual-
  - d) Other
  
5. Are you Single/ Married/ Divorced-

### Paedophilia and Ideas About it

6. Define 'Paedophilia'. What does it mean to You?
  
7. Are you sexually attracted to
  - a) Boy-           Pre-Puberty/ Post-Puberty
  - b) Girl-           Pre-Puberty/ Post-Puberty
  - c) Both boy and girl-
  
8. Do you fantasize about having sex with children? How Often? What do you do in such circumstances?
  
9. Does your sexual identity correlate to the description of you being a political activist?
  
10. What would you do with children if legal restriction were entirely removed?
  
11. Have you ever considered travelling to a country where laws are different, or age of consent is lower?



12. If yes, would you choose Thailand? Or any other country specify.

**SERVICES AT GERMANY (Fill only)**

13. Are you aware of pedophilia being illegal in Germany?

- a) Yes
- b) No
- c) I am aware, but not sure of it
- d) I am aware, but I pay no heed to it

14. Have you engaged in sexual liaison/ bought sex in your country?

- a) Yes
- b) No, why?
- c) Wish to, What stops you from doing this?

15. What are the factors that make access to children troublesome in Germany?

**SERVICES IN THAILAND**

16. Why do you think child sexual abuse is so rampant in Thailand?

17. How does economic differentials between Thailand and Germany govern the paedophile networks of sexual exploitation?

18. Do you think state capacity is an important yardstick in creating a strong mechanism against sexual abuse? Does this apply in case of Germany-Thailand network of sexual exploitation of children?

19. What type of establishments do you consider as a part of child sex industry?

- a) Hotels
- b) Brothels
- c) Normal bars
- d) Strip clubs

20. What determines easy accessibility to children in Thailand?

- a) It is part of Thai culture
- b) State enforcement of Norm against abuse is weak
- c) Background of children and role played by parent

## **APPENDIX-III**

### **A. Main Agencies/Committees/ Bodies of United Nations for Child**

#### **Rights**

- The United Nations Children's Fund (UNICEF)
- The Office of the High Commissioner for Human Rights (OHCHR)
- World Health Organisation (WHO)
- The United Nations Educational, Scientific and Cultural Organisation (UNESCO)
- The International Labour Organisation (ILO)
- The Committee on the Rights of the Child, members of other human rights Treaty Bodies, Council on Human Rights (and former Commission on Human Rights)
- United Nations World Tourism Organisation (UNWTO)
- The Inter-Agency Group on Violence against Children
- The Office of the United Nations High Commissioner for Refugees (UNHCR)
- The United Nations Office on Drugs and Crime (UNODC) United Nations Development Programme (UNDP)
- The joint United Nations Programme on HIV/AIDS (UNAIDS)
- The United Nations Department of Public Information (UNDPI)
- The United Nations Information Service (UNIS)
- The Division for the Advancement of Women (DAW)
- The United Nations Population Fund, (UNFPA)
- The United Nations Development Fund for Women (UNIFEM)
- The United Nations Fund for International Partnerships (UNFIP)
- The United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA)

### **B. Landmark Convention/Treaties/ Protocols**

- Declaration of Rights of Child -1924
- Minimum Age Convention - 1973
- Universal Declaration of Human Rights - 1948
- International Covenant on Economic, Social and Cultural Rights 1966
- International Covenant on Civil and Political Rights - 1966
- Convention on the Elimination of all Forms of Discrimination against Women- 1979
- U.N. Convention on the Rights of the Child - 1989
- Optional Protocol to the CRC on the Sale of Children, Child Prostitution, and Child Pornography - 2000

- Optional Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict - 2000
- Convention on the Rights of Persons with Disabilities – 2006
- International Convention for the Protection of All Persons from Forced Disappearance – 2006

### **C. Special Rapporteurs Created for Child Rights Protection**

- Special Rapporteur of the Commission on Human Rights on the sale of children, child prostitution and child pornography, 1990 - 1980/68
- Special Representative to the Secretary General on violence against children, 2004- 2004/110
- Special Representative of the Secretary General for Children and armed conflicts, 1980 - 51/77
- Special Rapporteur on trafficking in persons, especially in women and children -A/RES/62/141

### **D. Name of Regional Organisation working for Child Protection**

- The African Union, in particular its African Committee of Experts on the Rights and Welfare of the Child
- The Caribbean Community (CARICOM)
- The Council of Europe, particularly the Deputy Secretary-General of the Council and the European Commissioner for Human Rights
- The European Union, in particular, the Personal Representative of the Secretary-General on Human Rights
- The League of Arab States
- Association of South East Asian Nations
- The Organisation of American States and, in particular, its Inter-American Commission on Human Rights
- The South Asian Association for Regional Cooperation

### **E. Landmark Treaties/Charters/Conventions made at the regional level**

- European Convention on Human Rights, 1950
- American Convention on Human Rights (Pact of San José, Costa Rica) 1979
- African Charter on Human and People's Rights (Banjul Charter) and Protocol 1981
- African Charter on the Rights and Welfare of the Child 1990
- European Convention on the Exercise of Children's Rights 1996
- Hague Convention on Jurisdiction, etc., Relating to Adoptions 1965
- European Convention on the Adoption of Children 1967

- Hague Convention on the Civil Aspects of International Child Abduction 1980
- The European Convention Concerning the Custody of Children 1980
- Inter-American Convention on Conflict of Laws Concerning the Adoption of Minors 1984
- Hague Convention on the Protection of Children in Intercountry Adoption 1993
- Hague Convention on Jurisdiction, etc., for the Protection of Children 1996
- Worst Forms of Child Labour Convention 1999

## **F. List of NGOs Working against Sexual Exploitation of Children**

- Amnesty International
- Centre for Organisation Research and Education/World Coalition for Indigenous Children and Youth, India
- Center for Justice and International Law (CEJIL), Brazil
- Center of Legal and Social Studies on Childhood and Youth, Argentina
- Centre of Concern for Child Labour, India
- Child Rights Advisory Documentation and Legal Center (CRADLE)
- Child Rights Information Network
- Consortium for Street Children, United Kingdom
- Defense for Children International, Costa Rica
- Disabled Children's Action Group, South Africa
- End Child Prostitution, Child Pornography and Trafficking of Children for Sexual Purposes (ECPAT)
- Focal Point Sexual Exploitation of Children, Switzerland
- Global Initiative to End all Corporal Punishment of Children, United Kingdom
- Global Movement for Children
- Human Rights Project, Bulgaria
- Human Rights Watch
- Inclusion International, The Canadian Association for Community Living
- International Award Association
- International Committee of the Red Cross;
- International Federation of Red Cross and Red Crescent Societies
- International Federation of Social Workers, Switzerland
- International Institute for Child Rights and Development (IICRD), United States
- International Save the Children Alliance, Norway
- International School Psychology Association (ISPA)
- Norwegian Refugee Council
- Resources Aimed at the Prevention of Child Abuse and Neglect (RAPCAN), South Africa

- Save the Children
- SOS Children's Villages
- The National Council for Childhood and Motherhood, Egypt
- Women's Commission for Refugee Women and Children
- World Alliance of YMCAs
- World Association of Girl Guides and Girl Scouts
- World Vision International, Australia
- Yemen Psychological Association, Yemen

## APPENDIX-IV

### COUNTRY PROFILE FOR GERMANY

#### Status of Ratifications

Human Rights Instrument : (Date into force)	Ratification Status	Declaration
<b>International Convention on the Elimination of All Forms of Racial Discrimination :1969</b>	Signature: 1967, Ratification/Accession: 1969	✓
<b>International Covenant on Civil and Political Rights :1976</b>	Signature: 1968, Ratification/Accession: 1973	✓
Optional Protocol to the International Covenant on Civil and Political Rights :1976	Signature: NA, Ratification/Accession: 1993	✓
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty :1991	Signature: 1990, Ratification/Accession: 1992	
<b>International Covenant on Economic, Social and Cultural Rights :1976</b>	Signature: 1968, Ratification/Accession: 1973	
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights :2013	Signature: NA, Ratification/Accession: NA	
<b>Convention on the Elimination of All Forms of Discrimination against Women :1981</b>	Signature: 1980, Ratification/Accession: 1985	✓
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women :2000	Signature: 1999, Ratification/Accession: 2002	
<b>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment :1987</b>	Signature: 1986, Ratification/Accession: 1990	✓
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment :2006	Signature: 2006, Ratification/Accession: 2008	✓
<b>Convention on the Rights of the Child :1990</b>	Signature: 1990, Ratification/Accession: 1992	
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict :2002	Signature: 2000, Ratification/Accession: 2004	✓
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography :2002	Signature: 2000, Ratification/Accession: 2009	
Optional Protocol to the Convention on the Rights of the Child on a communications procedure :2014	Signature: 2012, Ratification/Accession: 2013	✓
<b>International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families :2003</b>	Signature: NA, Ratification/Accession: NA	
<b>International Convention for the Protection of all Persons from Enforced Disappearance :2010</b>	Signature: 2007, Ratification/Accession: 2009	✓
<b>Convention on the Rights of Persons with Disabilities :2008</b>	Signature: 2007, Ratification/Accession: 2009	
Optional Protocol to the Convention on the Rights of Persons with Disabilities :2008	Signature: 2007, Ratification/Accession: 2009	

## APPENDIX-V

### COUNTRY PROFILE FOR THAILAND

#### Status of Ratifications

Human Rights Instrument : (Date into force)	Ratification Status	Declaration
<b>International Convention on the Elimination of All Forms of Racial Discrimination :1969</b>	Signature: NA, Ratification/Accession: 2003	✓
<b>International Covenant on Civil and Political Rights :1976</b>	Signature: NA, Ratification/Accession: 1996	✓
Optional Protocol to the International Covenant on Civil and Political Rights :1976	Signature: NA, Ratification/Accession: NA	
Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty :1991	Signature: NA, Ratification/Accession: NA	
<b>International Covenant on Economic, Social and Cultural Rights :1976</b>	Signature: NA, Ratification/Accession: 1999	✓
Optional Protocol to the International Covenant on Economic, Social and Cultural Rights :2013	Signature: NA, Ratification/Accession: NA	
<b>Convention on the Elimination of All Forms of Discrimination against Women :1981</b>	Signature: NA, Ratification/Accession: 1985	✓
Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women :2000	Signature: 2000, Ratification/Accession: 2000	
<b>Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment :1987</b>	Signature: NA, Ratification/Accession: 2007	✓
Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment :2006	Signature: NA, Ratification/Accession: NA	
<b>Convention on the Rights of the Child :1990</b>	Signature: NA, Ratification/Accession: 1992	✓
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict :2002	Signature: NA, Ratification/Accession: 2006	✓
Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography :2002	Signature: NA, Ratification/Accession: 2006	
Optional Protocol to the Convention on the Rights of the Child on a communications procedure :2014	Signature: 2012, Ratification/Accession: 2012	
<b>International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families :2003</b>	Signature: NA, Ratification/Accession: NA	
<b>International Convention for the Protection of all Persons from Enforced Disappearance :2010</b>	Signature: 2012, Ratification/Accession: NA	

<b>Convention on the Rights of Persons with Disabilities :2008</b>	Signature: 2007, Ratification/Accession: 2008	✓
Optional Protocol to the Convention on the Rights of Persons with Disabilities :2008	Signature: NA, Ratification/Accession: 2016	