

# CHAPTER I

## INTRODUCTION

### A. Background

There are almost nineteen percent of the world's children live in India. There are about 440 million, one third of its country's population, haven't completed the age of 18 year old. India is a multi-ethnic, multi-religions and multi-cultural country. Problems like social marginalization and poverty have always been major issues in a big country with such big population like India. Often, the most vulnerable group for the criminal victim is children (Ministry of Women and Child Development Government of India, 2007). Child defined as people that haven't reached the age of eighteen years (Ministry of Law and Justice of India, 2012). Ministry of Women and Child Development Government of India divided children three levels of division; adolescent (15-18 years), children (13-14 years) and younger children (5-12 years).

Children have the rights to education, health, and development. However, these basic rights of children often be violated because of a needs based approach rather than a rights based approach (Kacker, 2007). Such action violating children rights usually called child abuse. Ministry of Women and Child Development of India defined child abuse as a sexual, economic, physic until emotional mistreatment toward someone under the age of eighteen and is considered as a global phenomenon. It sometimes also called as a child maltreatment which represents any type of physical and or emotional mistreatment, sexual abuse, abandonment, triggering potential damage to the child's development, health, survival or self-esteem regarding a relationship of responsibility, confidence or potency (World Health Center). There are many types of child abuse which can be vary such as being abandoned, abused sexually and or physically, exploited and abused emotionally (Childhelp, n.d.).

Not only children but also their families are often promised for a better life living far away from their homes. In fact, they are often trafficked for either sexual purpose or illegal working purpose. National Crime Records Bureau (NCRB) reported that there were 9034 people below 18 year old in India was trafficked based on 2001 population data census. The report stated that the data served was also taken according to the trafficking purposes that varies; sexual exploitation for prostitution, forced labour, domestic servitude, drug peddling, pretty crimes, other forms of sexual exploitation, child pornography, forced marriage, begging, removal of organs, other reasons (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000).

World Health Organization defined child sexual abuse as a situation where a child does not fully understand that she or he involves in a sexual action, is unable to give informed consent to, or for which the child is not developmentally prepared and cannot give consent, or that against the laws or social value of the community. It defined for a sexual case between a child with an adult or with another child who is still in a relationship of responsibility, trust or power, the activity tends to satisfy the needs of the other person (World Health Organization ). Child abuse is an action that put harm on a child or young person and failing to create protection for them. A family member or a close person and strangers (from the internet) are the trends of people who would likely to abuse children sexually (National Institute for Health and Care Excellence , 2017).

In India, child rape, selling of girls for prostitution, and buying of girls for prostitution are some of CSA form that were recognized by the NCRB through its reports. Studies and data are still very minim about CSA. Thousands of children are reported being abused sexually every year. Within five years in 2000 to 2004, there were 14464 cases reported that children were raped, sold for prostitution, and bought for prostitution.

The highest number of rape during the period of time was in 2004 as 3542 reported cases. Rape is known as the most used CSA form in India which reached 14268 cases during five years. The activity of buying of girls for prostitution is higher than the number of selling girls prostitution as 113 and 83 cases. The selling of girls for prostitution in 2003 is 36 reported cases which is known as the highest number among the years while in 2002 there are 5 reported cases which is known as the lowest number among the years. The buying of girls for prostitution in 2000 is 53 reported cases which is known as the highest among all the years while in 2001 there are 8 reported cases which known as the lowest number among the years. The number of the cases keep increasing from year to year except from 2000 to 2001.

According to Article 3, paragraph (a) of the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Woman and Children, Trafficking in Persons includes the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery or practices similar to slavery, servitude or the removal of organs (Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, 2000).

Convention on the Rights of the Child (CRC) is the first international tools to encounter a comprehensive legitimate obligation for State Parties to protect children from all forms of sexual exploitation and abuse. The previous draft of the article 35 prohibited “neglect, cruelty and exploitation and traffic”. It

didn't mention sexual exploitation of children specifically even though it indirectly recognized the existing of sexual exploitation around the world (UNICEF, 2009).

On 25 May 2000, the Optional Protocol on the sale of children, child prostitution and child pornography was established. It is a further commitment for the Convention on the Rights of the Child to reach the goals of the further implementation about the convention especially articles 1, 11, 21, 32, 33, 34, 35 and 36 as the further measures to the States Parties in guaranteeing the protection of the children from the sale of children, child prostitution and child pornography.

The key factors of the establishment of the optional protocol is considering the rights of children regarding to the Convention on the Rights of Child such as the combat in economic exploitation that would affect the effectiveness of the child's education, health, physical, mental, spiritual, moral and social development. The significant increasing of international children trafficking purposing the sale of children, child prostitution and child pornography (Office of the High Commissioner of United Nations Human Rights, 2000).

Optional Protocol is an independent treaty that is open for signatory, accession or ratification by state who are participate to the main existing treaty it complements and adds to. It provides for procedures or addresses a substantive are related to the treaty. They are optional because states independently choose whether or not to be bound by them (ECPAT).

States Party are expected to ensure the compatibility of existing and new legislation and judicial practice with the convention. Independent national children's rights institutions must be developed. According to the Protocol in Article 2 (Unied Nations Human Rights, 2000):

- a. Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;
- b. Child prostitution is an intent to use a child for sexual purpose to get remuneration or any other form of consideration
- c. Child pornography means 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

India, as the home to 19% of world's children must do a significant efforts to protect the children. With such big issue on child sexual abuse, it is expected that India could implement the OPSC in order to combat child sexual abuse in India. On 15 November 2004, India had signed the OPSC and ratified it in 16 August 2005.

## **B. Research Question**

The research question of the thesis is: "How does India implement the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography as the efforts to combat Child Sexual Abuse (CSA) (2005-2013)?"

## **C. Theoretical Framework and Application**

In analyzing the efforts of India in implementing the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography as the efforts to combat Child Sexual Abuse (CSA) in 2005 to 2013, I use Compliance Theory. Compliance is very important to the role of international law in regulating the interaction of the nations. With the absent of compliance, the existing of legal regulations that has been set

would only be a waste (Guzman, 2002). A compliance system is a set of behavioral recommendation conducted as a regulation for certain interdependence groups for certain purposes (Young, 1979). According to Fisher in (Raustiala & Slaughter, 2002) compliance as a country's harmony or identity between an actor's behavior and certain regulation.

International agreements are formulated on certain purposes. It has entered a "regulatory space" which has discussed a set of problems and policy strategy. It is through the domestic institutions and any other forms of domestic representative actors that would bring the value of the international regulations in which later would be interpreted as a compliance. It is a very important effort for domestic actors to do so in order to participate in international environmental regimes and to comply the commitment they agree to follow (Hanf, 2015). Policy implementation covers all the actions conducted by private and private groups or individuals aimed to achieve the objectives of the policy (Paudel, 2009).

The relations between international institutions and domestic actors are likely elaborated in three different ways. Firstly, institutions are formed and provided access to intervene the domestic actors who are assigned to promote the enforcement. Secondly, the agreement itself might be powerful to influence the domestic actors in complying the regulations. The last is beyond the relations between the two aspects but more in forming a certain mechanism to enforce the regulation to persuade the participating states in term of political and legal systems.

The theory of compliance has been a critical topic among the scholars. It is formulated to answer a fundamental question of *why do states comply certain international regulations?* It covers all the international aspects from international security, political economy, business transaction, regional organizations and to international organizations. There are two fundamental perspectives on explaining why states comply certain

international regulations. According to Chayes in his book, *The New Sovereignty*, states tend to obey certain international regulations because they are influenced or attracted by the dynamic set by the treaty maker, not because they are threatened by the sanctions. To Frank, in his book, *Fairness in International Law and Institutions*, considerations of legitimacy and distributive justice are the most reasonable factors of why states obey the regulations (Koh, 1997).

According to Tyler, there are two fundamental perspectives on compliance toward the law, they are instrumental and normative. According to instrumental perspective ones comply the law because of personal interest and intent on behavioral changes. In contrast, normative perspective is more concern on moral issue rather than personal interest and tend to comply a conform law to their norms (Tyler, 1990).

In this research, I will elaborate the efforts of India in implementing the OPSC in combating CSA from 2005 to 2013. OPSC as the output of the United Nations Human Rights (OHCHR) in form of protocol. It is as part of OHCHR regulations that it expects its participating states to comply. India as one of the participating state or a state party had ratified the protocol in 16 August 2005 which means it has committed to comply the regulation stated in the protocol.

The intention of India in ratifying the OPSC is the interest of the state in needing aids and guidance to help them to solve the issue of CSA. Besides, the interest comes also from the external factor for India to ratify the OPSC. Since India had ratified the Convention on the Rights of the Child (CRC) in 1992, the Committee on the Rights of the Child of the United Nations, through the CRC Consideration of Reports in 2003, had strongly recommended India to ratify the CRC's two Optional Protocols which includes the OPSC. In 2005, India signed and ratified the OPSC. Therefore, after the ratification, the implementation of the OPSC by the India is considered as

the compliance to the OPSC (Committee on the Rights of the Child, 2003).

#### **D. Hypothesis**

The efforts of India in implementing the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography as the efforts to combat Child Sexual Abuse (CSA) in 2005 to 2013 are implemented into forms of:

1. The establishment of CSA related institutions;
2. The adoption of domestic policies related to CSA;
3. The establishment of coordination related to CSA; and
4. The adoption of CSA related resources.

#### **E. Research Method**

This is a library study and a qualitative research. The data collected in this research are secondary data obtained from books, e-books, journals, e-journals, e-articles, news items, official websites, reports and other online-offline documents. The research is written using descriptive analytic research method.

As Glass and Hopkins (1996) mentioned that descriptive should explain about data describing about the events, organizes, tabulates. This paper will have an in-depth analysis through Optional Protocols on the Sale of Children, Child Prostitution and Child Pornography conducted by United Nations Human Rights (OHCHR) as a response to high rate of Child Sexual Abuse issue across the globe.

The study becomes significant because issues about Child Sexual Abuse (CSA) is still lack of awareness from the society either it is to distribute efforts or to be aware that children are ironically traded among human for sexual purposes. Children are often being neglected in the society. Moreover, in many

conservative areas, children are expected to obey adults which somehow would make the perpetrators to use this as the weakness of their victims. Therefore, a further study about CSA is needed to be conducted as comprehensive as possible.

## **F. Research Objective**

This research is aimed to elaborate the efforts of India in implementing the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) to combat Child Sexual Abuse (CSA) in 2005 to 2013.

## **G. Research Limitation**

This research focuses on how India implements the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography as the efforts to combat Child Sexual Abuse (CSA) in 2005 to 2013. The adaption of the convention into India's policy, plan and other kind of implementation will be the main focus of this research.

## **H. Thesis Outline**

This research is written into five chapters. Chapter 1 contains of an introduction, which is divided into background, research question, theoretical framework, hypothesis, research methodology, objective of research, limitation of research, system of writing, and references.

In Chapter 2, there is a description of CSA in India. The dynamic of CSA happened in India in 2000 to 2004 before the Government of India ratified the OPSC in 2005. An elaboration of factors that influence the significant issue of CSA in India is also examined. This chapter is ended with a description of the impact of CSA in India which finally led India to ratify the OPSC in 2005.

In Chapter 3, I elaborate about the OPSC. A comprehensive and brief explanation about optional protocol will be the first discussion of this chapter. Then, I present an elaboration of the background of the OPSC and the content of the OPSC will be the closing of this chapter.

In Chapter 4, I present an analysis on the implementation of India on the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography as the efforts to combat Child Sexual Abuse (CSA) in 2005 to 2013. The discussion is divided according to the Government of India's efforts into general implementation, preventive implementation, prohibitive implementation, protective implementation, and international assistance and cooperation.

Chapter 5 is the last chapter of this research. It consist of the conclusion of this research. I will restate the discussion of this research in a brief summary.