

**INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES**
[ISSN 2581-5369]

Volume 3 | Issue 2

2020

© 2020 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at editor.ijlmh@gmail.com

Preventing Child Trafficking in India through Effectiveness of Laws

SAKET MANGLA¹ AND TANUJ JAIN²

ABSTRACT

Child trafficking a modern day slavery which is the hazardous offence all over the world. This is expanding like a poison in the air. According to law, a human who is under the age of eighteen years include in word child and when any injustice or manipulation is done with them is called child trafficking. Every year crore of human get traded and trafficked against themselves and forced to do slavery, child labour, organ trade and domestic services.

The biggest role of some family is that they insist their child to do work due to poverty and they are promised for daily wages to support their family, but in reality they are bought in slavery, trade and trafficking.

These crimes are hushed crimes without any single traces such activities cannot be prevented. Child trafficking is due to poverty, illiteracy of parents and due to family conditions in which parents insist their child to go for work and this is a breach of basic human rights.

This paper contains how to prevent child trafficking and what are the steps should be taken to prevent it. By preventing trafficking the child will get their rights and get proper education which leads the world towards development and helps to grow the child.

Keywords: Rights, Slavery, Trafficking, Protection and Trade etc.

I. INTRODUCTION

Child trafficking is the violation of human rights all over the world. Taking out children from their protective domain, devouring their weakness and forced to leave their homes for the purpose of exploitation. Trafficking basically means to find the children and to transport them from country to country. As International Labour Organization says it is type of slavery and dangerous to the health and development of child.

Nowadays child trafficking is getting more critical because of the demand for cheap labour where the labour intensive and capital intensive is poor. These children are those who get

¹ Student of Manipal University Jaipur, India.

² Student of Manipal University Jaipur, India.

separated from their families due to some calamity because of which they did not get proper education and don't have freedom to choose their own life and get used by others for illegal work.

These are some gangs or fake organization who adopt children and send them across the country and child trafficking is not limited as they get trafficked in every field like factories, domestic help in other countries, farm field, bars, restaurant, prostitution and most harsh sex slavery.

As United Nations 8th Secretary-General said: "Human traffickers quarry on the most hopeless and vulnerable. To end this brutal practice, we must do more to protect migrants and refugees from those who would exploit their wants for a better and safer future."

According to report by International Labour Organization (ILO)³, child trafficking mostly include girls under age 18years. It is estimated that profits of approx. 150 billion dollar per annum is earned from coerced labour as per 2014 data. The organisation, in 2012, also estimated that around 21 million victims of child trafficking are trapped in slavery.

II. CAUSES OF TRAFFICKING

- Poverty
- Lack of education
- Natural disasters
- Lucrative activity
- Lack of migration options

Poverty

For money or in need of money parents sell their children for their survival or send their children for work actually they get nothing but their child treated as slaves. When traffickers get workers for free and sell them at high rates which make other people insane to become traffickers.

Lack of education

Education is one of the best ways to change the community and best way for preventing trafficking. But due to lack of education no one is aware about child rights and human rights which decrease opportunity to work for daily wages. Because of this parents send their child

³ <https://timesofindia.indiatimes.com/topic/human-trafficking>

for work and sell them.

Natural disasters

Children who get separated from their families due to mishap or disaster and in search of shelter, money, food which become the advantage for traffickers. Instead of helping them they start making false offers and keep them in trafficking situations.

Lucrative activity

When traffickers or poor people get some lucrative (profitable) deal they kidnap the child and transport them for their gain. Which leads traffickers to get more active.

Lack of migration option

Children who come from one state to another or from country to other county for education or work get trafficked easily because traffickers offer them fake jobs, shelter which lead them to be trafficked.

III. TYPES OF TRAFFICKING

- Illegal activities
 - Begging –(send child on crowded area to beg and took money from them)
 - Smuggling-(smuggling of drugs by inserting drugs in their body)
 - Organ trade-(trade organs mostly Kidney to earn money through trafficked child)
- Sex exploitation
 - Pornography-(trade children for sex slavery in massage parlour or for sex tourism in hotels)
- Labour work
 - Forced labour-(trafficked child use to work in hazardous area)
 - Domestic work-(send to other state to work in homes)
 - Construction work-(work in mines)

IV. ANATOMIZATION OF CHILD TRAFFICKING

As per the report of NHRC where, it says that in India the most of children that are trafficked is not only limited to ‘sex trade’ but also includes a such other forms of ill treatment and a wide types of servitudes varying from industrial labour, begging, organ trade, domestic labour etc.⁴

⁴ A Report on Trafficking in Women and Children in India 2002-2003.

In 2001, after the Bhuj earthquake and in wake of 2004 tsunami, Adoption acquired another dimension by trafficking of children in the name of adoption which led to outflowing of solidarity in India and around the world. Seeing the condition from other countries some 60 organization of child rights called on a yearlong ban on adoption from such affected places. The Tamil Nadu government decided for not entertaining any case for adoption of children affected by tsunami⁵.

As per the report of Trafficking in Person (TIP) it says that India is not just a transit nation or just a destination nation for such crimes rather it is a source to a number of countries in various continents. Where the children from India are sent to, including countries like Uganda, South Africa, Kenya in Africa; Bhutan, Pakistan in South Asia; in Kuwait & UAE from the Middle East; Singapore & Malaysia from the South East Asia; Norway, Greece, Finland, Austria, Italy from Europe.

V. GAPS, CHALLENGES AND GOVERNMENT EFFORTS FOR COMBATING TRAFFICKING

Whether the problem is of human trafficking or of child trafficking, it is multidimensional problem; Hence a coordination of various Ministry is needed like the very first and foremost the Ministry of Home Affairs (MHA), Ministry of External Affairs (MEA), ministry of Overseas Indian Affairs (which is now merged with MEA from 2016) and Ministry of Woman & Child Development (MWCD).

The MHA through its Anti-Trafficking Agencies is the Nodal Authority for enforcement and implementation of The Immoral Traffic (Prevention) Act 1956 and control of other Human tackling of crimes on children. It is to work in coordination with other ministries like MHA. However, In India the MHA & MWCD work in coordination with UNODC's Regional Office for South Asia (ROSA) for addressing the issue of human trafficking.

Since at times the victims of such trafficking are the children below the age of majority so these children are in the ambit of the Juvenile Justice (care and protection of child) Act, 2015 and to be given care and protection under its relevant provisions. These responsibility vests with the child welfare committee (CWC) which are setup under the Juvenile Justice system with coordination with the Integrated Child Protection Scheme (ICPS). In addition to the National Commission for Protection of Child Rights (NCPCR) the central government's MWCD and the concerned State Ministry are in together responsible to address these issues.

Few of the recognized universities have launched various web-based programs related to the

⁵ "The Adoption Market." *Frontline. The Hindu*, 21 May 2005.

topic, to create awareness among the people for Trafficking laws and also to bring awareness in the area of law, policies, rehabilitation where the Ministry of Home Affairs in 2010 collaborated with Indira Gandhi National Open University (IGNOU).

VI. LEGAL PROVISIONS FOR PROTECTION OF CHILD UNDER INDIAN LAW-

1. The Constitution of India

Under the Indian Constitution Trafficking is totally prohibited. A Fundamental Right which provides for the trafficking of humans and other like forms of labour work (in hazardous areas) which are against the law are prohibited. As per Article 23(1) there exists the right against exploitation which is granted as and any contravention of this provision shall be an offence punishable in accordance with law, against the state and citizens this right can be exercised.

Further, Article 24 says about Protection of children below the age of fourteen year from working in hazardous employment, digging places or factories.

2. The Indian Penal Code, 1860

There are various provisions under the Indian Penal Code which are relevant few of these Sections are –

293- Sale, etc. of obscene object to young person

359- Kidnapping

361- Kidnapping from lawful guardianship

363- Punishment for kidnapping

As per section-366A, which says about procurement of a girl who is minor from one part of India to another with intent to force in illicit services is liable for 10 years of imprisonment and fine and as per section-366B, which says about the importation of a girl into India from any Country below the age of 21 years is punishable with 10 years' imprisonment and fine.

370- Trafficking to person (amendment)2013- who ever for the purpose of exploitation, transfer , receive person by using threat, force , abduction, fraud, abuse of power, commit an offence of trafficking.

- Whoever commit trafficking will be held liable for rigorous imprisonment for tern not less than seven years, but which may extend to ten year, and also held accountable for fine
- If trafficked more than one person than rigorous imprisonment not less than ten years, but extent to life imprisonment.

- If trafficked more than one minor than rigorous imprisonment not less than fourteen years, but extent to life imprisonment and also held accountable for fine.

On the other hand Section 374 provides for punishment for one year and fine or both for compelling a person against their will to unlawful compulsory labour.

Sections 372 which says about selling of minors for the purposes of prostitution shall be liable for imprisonment of either description which can extend to ten years and shall be accountable for fine.

Whereas **Section 373 says about buying of minor girls for the purpose of prostitution** which shall be punished with imprisonment of either description which can extend to ten years and shall be accountable for fine.

3. **The Juvenile Justice Act of 2000**

This Act is known as The Juvenile Justice (Care & Protection of Children) Act, 2015 after the amendment. This amendment also includes new offences against the child. These include sale of child, use of child by criminal organization, kidnapping and abduction of child etc.

The primary objective of this act is to provide for the proper and time to time care, protection and treatment of the children. Thus this Act is in consonance with the Convention on the Rights of Child.

Section 29 of this Act allows state governments to represent Child Welfare Committees (CWC) for every such area that they may deem fit. Under section 31 these committees are the final authority to dispose of the cases. Under Section 34 and section 39, a state government could set up and take care of children's homes or shelter for the care, protection of children and the chief objective of such establishment by the government must be restoration and protection of children respectively.

Further it also outlines the powers that the committee is entitled with and the procedure that is to be followed by this committee. If any official fails to report an abandoned or orphaned child within a given time period that is 24 hrs, is liable for imprisonment or fine of rupee 10,000 or both.

4. **Immoral Traffic (Prevention) Act, 1956**

This Act is safeguard for sexual exploitation and commercial sexual exploitation of children. However the word trafficking is not defined anywhere in the Act but its state legislation. Few offenses that are covered under this Act are:

- Seduction of person

- Prostitution at Public places
- Keeping or allowing brothel
- Detaining person(s) for slavery.

5. The Child Labour (Prohibition and Regulation) Act, 1976

This Act under Part A of the schedule says about the Prohibiting employment of children in specific places. Further this Act lays down the places and conditions where children can work also the Act says that one hour of interval is to be stipulated to children after 3 hours of work.

6. The Child Marriage Restraint Act, 1929

In order to protect the small children from the menace of marriage this Act lays down the legitimate age of marriage at 21 years for boys and 18 years for girls. Under this Act courts have the power to declare injunction relating to such marriage.

7. Protection of Children from Sexual offences Act of 2012

The special dedicated law for the protection of children from exploitation & sexual abuse. The Act provides definition of sexual abuse of various forms like sexual harassment, penetrative and Non-penetrative assaults also. So that the offenders can be prosecuted for all the crimes that have been committed on the children. This act came into force on 14th November 2012.

To deal with these kinds of matters, state governments have enacted specific legislation. (e.g. The Punjab Prevention of Human Smuggling Act, 2012)

8. In India, Goa has (Goa Children's Act, 2003)

As the child abuse incidence are rising with an average pace of 20 cases per month, for this state government is screamed by the child rights in goa , then in 2003 government led by Manohar Parrikar issued financial issuance for administration of the Goa Children's Act (2003). Several Rights are linked to children addressed in this act in an integrated manner. The highlights of this are:

- For the first time legal definition of trafficking was given under Indian jurisprudence.
- Each and every type of sexual exploitation is covered under the ambit of definition of sexual exploitation.
- The owner & manager of the hotels or inns are given the responsibility of ensuring safety of children.

Different stakeholders have taken very energetic steps to construct Goa a child-friendly state. As CRG said, government is providing blooming cards to each and every child, early

intervention to notice any development disorders, gender sensitisation and awareness of rights in all schools.⁶

VII. PREVENTION OF TRAFFICKING

The trafficking of humans could be prevented by several ways of intervention. Also there exists the needs of sensitization and public awareness, with focus upon those vulnerable places which are directly or indirectly responsible for creating such surroundings for trafficking.

Through State

Obligatory and a class of education for all sects of society, also ensuring proper and secure employment opportunities to all including women. Promote quality of education program for teachers and students even at government schools including rural areas. Strict implementation of Anti-trafficking laws at this level and fund the education for poor children so that they get that much knowledge and are aware about the laws relating to child trafficking.

Through NGOs

The entire community should keep a sharp-eyed and close watch on the movement of any suspected sufferer and also on such traffickers which generally operate at the remote areas or the backward areas and even the slums of the Cities and towns. These non-governmental organizations can with the help of area police can put a check on such situations. Also these NGOs can educate and confirm that the parents are also aware about the safe passage practice. Their main motive is to provide service to the helpless commodities of society and inspire them in order to make them physically and mentally strong to encourage and fight against the various kinds of manipulation in this world.

Through Media

Media can also play a very vital role in this due to a major viewership. They can organize various programmes to make citizens enlightened about places and institutions to seek help in case they are trapped. Also educating the people about the emergency contacts for such activity. Make them aware about laws relating to child trafficking and about illegality of child trafficking and what methods to stop child trafficking. By writing an article or broadcasting an item focusing on trafficking in persons, the media not only educates the public but also gives torch on matters which are hidden in the dullness.

⁶<https://timesofindia.indiatimes.com/city/goa/ngo-wants-govt-to-budget-for-enforcing-go-a-childrens-act/articleshow/57800343.cms>

VIII. PRESENT SCENARIO OF RESCUE & REHABILITATION

At the district level the death of shelters for the women and girls is much higher with respect to need of assistance and vulnerability of being trafficked, and the quality of care & protection that is provided in the existing shelter is very poor & insufficient towards the need of survivors. For the rehabilitation of these rescued women there is insufficient staff who could train them in a psycho-social way. However, the Ad-hoc measures that the government has initiated, or we can say the initial steps taken by government like counselling by police, establishment of Mahila Thanas, volunteers and a few NGOs but without any legal mandate. However, the lack of coordination at the various levels among the government and the police, the judicial system with the government with regard to rehabilitation & rescue at the round level which has led to half-hearted results because of such half-hearted attempts at various levels. Hence, there is a need for more strict & straight laws with strict implementation.

IX. STRENGTHENING REHABILITATION AND RECONSTITUTE

Couple of steps that can be implemented:

- The relevant provisions of Juvenile Justice Act, 2015 must be strictly followed.
- The protocols established by the ministry of women & child development must be executed by the state machinery relating to rescue & post rescue measures.
- The victims that have been freed from trafficking must be provided with proper rehabilitation support including counselling & psychological care.
- Providing a proper and timely legal Assistance from the time of FIR filling and throughout the proceedings.
- Awareness program about law for all citizens so that they can also understand their responsibility.

X. THE TRAFFICKING OF PERSONS BILL, 2018⁷

The full name of the Trafficking bill introduced in 2018 is The Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill, 2018. Following are its features.

- The main Features of the Bill is National Anti-Trafficking Bureau (NATB).

⁷ <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1522075>

- This bill offers the formation of (NATB) to investigate trafficking cases. It consists of police officers and other officers as required to solve the cases. It provides authorities at all 3 levels i.e. District, State & National level. Also, the Bill is supposed to establish the Anti-trafficking units for Rescue & Rehabilitation of victims. The introduction of the aggravated forms of trafficking which includes bearing children, forced labour or begging etc.
- It will function to monitor surveillance, get to know about trafficking routes, to know about the criminal organization of trafficking, coordination between executive and legislative for proper functioning and intelligence sharing about trafficking.
- The Bill aims to set out penalties of the offence related to trafficking; for many penalties which are already prevailing under law it aims to provide higher punishment and also provision for higher punishment in case of Aggravated trafficking.
- Establishment of special and dedicated courts- The Bill aims to provide establishment of designated courts in every district which will be having the complete trail of such cases within a year.
- This Bill empowers Anti-Trafficking Police Officers or anti-trafficking units (ATU) to rescue persons, if they are in anticipated danger. Then in front of the Child Welfare Committee or Magistrate the victim will be produced for medical examination. Then this committee provides a Rehabilitation Fund that is to be used for protection and various other basic facilities at the Rehabilitation Homes.
- When at the district level the District Anti trafficking authorities have rescued any victim; then they have to inform the anti-trafficking committee about such rescue. So that the committee can provide the appropriate interim relief. Then this committee has to make directions for ensuring the protection of the victim and their restoration and with reference to bounded labour for facilitating inter-state repatriation.
- The anti-trafficking committee at the state level has to arrange for the sensitization & training and also making appropriate methods of preventing such offences.
- The Anti-trafficking committee at the state level has a few functions as:

Regulating the funds of Rehabilitation.

They have to collect data & reports from all the states and districts and also to check upon the functioning & service of the rehabilitation homes.

Ensuring the timely and proper rehabilitation & rescue of victims from such traps.

XI. UNICEF ROLE ON CHILD PROTECTION

The United Nations General Assembly charged UNICEF to stand up for the security of children's rights, to help them by providing general needs of day to day life as required by children and to give opportunity to develop. It is safeguards for children which protect them from illegal work. UNICEF mainly works to control child trafficking by focusing on poverty, education, monitoring them and helping children to get out of those who are trafficked.⁸

And these children get shield when-

- State government took this as a serious matter.
- When society gets aware about child trafficking.
- When everyone came to know about laws regarding child laws.
- Children have the knowledge about child trafficking and child abuse.

For all these UNICEF⁹ is conducting a convention to aware the states about child rights and standard behavioural towards children. They also incesst for betterment of their survival and development because they are the future of the world. UNICEF is an international organization that works with its partners in every state to promote the child rights and to reinforce their work in political, communal and productive development for them and social progress immortalized in the charter of the UNITED NATIONS.

XII. THE WORLD WIDE COMBAT

How has India apply the International Conventions on Trafficking¹⁰?

- **United Nation Convention-** U.N. convention on transnational organized crimes was ratified by India which in its protocol includes prevention from trafficking & punishment of the person involved in these activities. Especially with relation to women & children. With relation to this many action are taken in the criminal law Amendment Act 2013, where Human Trafficking is especially defined.
- **The Two way Mechanism-** India has constituted Task Force for addressing the issue related to trafficking and its prevention and repatriation and also dealing with cross border trafficking and also making the process fast and providing a victim friendly environment

⁸ <https://www.unicef.org/protection/files/ipuglobaltrafficking.pdf>

⁹ https://www.unicef.org/about/who/index_mission.html

¹⁰ <https://mea.gov.in/human-trafficking.html> web viewed on 20-3-2020

in between India & Bangladesh. By this task force 5 meetings were done till now the last meeting was done at Dhaka Bangladesh.

In between India and Bangladesh a bilateral MOU (Memorandum of Understanding) has been signed for co-operation and prevention, rescue, reintegration of victims of trafficking and specially Children.

SAARC Convention

The SAARC Convention was ratified by India for preventing & combating trafficking. A regional task force has been formed for the implement the SAARC Convention, there have been 5 meetings of this task force till 2013 which was held at Paro, Bhutan. A Study tour was conducted by all the SAARC member countries from November 18 till November 22 in 2013; for experiencing and teach the Anti-Human trafficking units that are instituted in various parts of this South Asian region.

At the South Asian level India is presently signatory to two instruments which deals with sexual exploitation. Which are the SAARC conventions as follows:

- For promotion of child welfare in South Asia a Regional Arrangement
- Combating & preventing trafficking of women & children from prostitution, 2002.

XIII. CULMINATION

Nowadays child trafficking is the most heinous crime amongst the world. Which is increasing due to lack of education, unemployment and globalization which provide easy access to the offender to trade the child. It requires integrated and collaborative techniques and different forms of strategy to deal with the involvement of trafficking.

State-government, non-governmental organization, civil society citizens have to play an important and appreciable role to quash the trafficking exploitation for the safe future of the country.

To eradicate trafficking our country has laws for trafficking, policies amending law as required for trafficking. For the best result we need proper monitoring and timely check of laws and policies according to the time, so that we can have the smooth process of rehabilitation.

We also have to maintain the confidentiality clause, if the victim gets exposed in the media then there is a chance that the person or family members get depressed because of which society starts making distance from them.

There should be proper medical check-up of the victims. The report should be kept in uttermost confidentiality and victim compensation should be there which provide small monetary help to

them. However according to POSCO act, only Odisha has a law for victim compensation.

Introducing these small things, restricting some offence by taking these steps we can restrict such menace of trafficking.
