

## ROLE OF NATIONAL HUMAN RIGHTS COMMISSION IN THE CONTEXT OF CHILD TRAFFICKING

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*Democracies are a means to ensure human rights, uphold the rule of law and create a just system for all.*

**President Pratibha Patil**<sup>2</sup>

### I. Introduction

Human rights are those claims, which are legally recognized and protected to secure for each individual. These are must for the fullest physical, mental, spiritual and moral development of personality. These rights are derived from the dignity and worth inherent in the human person<sup>3</sup>. Therefore, for the protection of human rights of masses, parliament of India had enacted the Protection of Human Rights Act, 1993. Under the Act the National Human Rights Commission and State Human Rights Commission has been established. India is a land of spiritual masters. Yes violation of human rights is going on in India like female pesticide, custodial violence, refugees, sexual harassment at work places, fake encounter, domestic violence, child labour, child abuse, prostitution, corruption and criminalization in politics, dowry death, environment pollution and **child trafficking** etc. *In this paper, researcher has laid emphasis on the problem of child trafficking in India and to analyze the steps taken by National Human Rights Commission in this direction.*

*"The child is soul of the society. There is need to find out their nature and capacities. The effort should be made to grow them into their maturity. Otherwise a nation cannot grow healthy"*

**Justice P.N. Bhagwati**<sup>4</sup>

How this notion of Justice P.N. Bhagwati could be relevant in a country where as per records approximately 44,000 children go missing every year and out of them 11000 never come back. The question is where they go? What happens to them? Whether they slipped in the hands of

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<sup>2</sup> That message was given by Hon'ble President of India at the Platinum Jubilee celebration of Maharashtra Legislature in Mumbai. See- The Hindu, October 19, 2011.

<sup>3</sup> *Valsamma Paul v. Cochin University*, AIR 1996 SC 10-11.

<sup>4</sup> *Laxmi Kant Pandey v. Union of India*, AIR 1987 SC 232, (1984) 2 SCC 248.

traffickers?

A Study conducted by the National Human Rights Commission (NHRC) Action in 2005 found that a majority of *trafficking* victims are children and almost half of the children trafficked within India are between the ages of 11 and 14. Apart from NHRC Action Study, media carried a report on 1<sup>st</sup> September, 2009 that the trafficking of girls children is rampant in the regions of tribal population in Chhattisgarh. Quoting a survey conducted by an NGO, the report alleged that 1433 girls were missing from 17 villages. Most of the girls in the tribal regions in the State are being lured under the false promise of jobs in the metropolitan cities and then forcibly pushed in flesh trade as either a sex worker or a maid servant without any payment to them<sup>5</sup>.

## II. Trafficking - Origin, Meaning and Causes

Historically, *trafficking in human beings* was associated with slavery and bonded labour and with the passage of time it got converted into prostitution. *Trafficking* means carrying on a trade especially illegal (as in drugs)<sup>6</sup>, buying or selling, often with sinister implication, and is used in a disparaging sense or in a sense of dealing considered improper<sup>7</sup>. And '*trafficking in human beings*' means selling and buying of human beings like goods and includes immoral traffic in women and children for immoral and other purposes<sup>8</sup>.

*According to the UN Convention against Transnational Organized Crime 2000, Trafficking in Persons* shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of 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 giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation<sup>9</sup>.

From the contents of above citations, it will not be wrong to say that, trafficking is an organized crime. Following are responsible causes of Children Trafficking:

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<sup>5</sup> Workshop on Elimination of Bonded Labour System in Orissa, 'Human Rights News Letter', Vol. 16 No. 10, October 2009, Published by National Human Rights Commission, p.2.

<sup>6</sup> Oxford Dictionary.

<sup>7</sup> Concise Law Dictionary.

<sup>8</sup> *Raj Bahudar v. Legal Remembrancer, Government of West Bengal*, AIR 1953 Cal. 522.

<sup>9</sup> Exploitation here means sexual exploitation, forced labour or services, slavery, servitude or the removal of organs.

1. Poverty<sup>10</sup>
2. Organ Trade<sup>11</sup>
3. Labour Purposes<sup>12</sup>
4. Entertainment purposes<sup>13</sup>
5. Camel Jockeying<sup>14</sup>
6. Prostitution<sup>15</sup>
7. Begging
8. Gender Bias<sup>16</sup>.

### III. Constitutional Provisions for the Prevention of Children Trafficking

The framers of Constitution of India incorporated a number of provisions for the overall growth of the children. The Preamble assures the dignity of individuals. To provide the dignified life to all including children, Article 15(3), 23<sup>17</sup>, 24, 39 (e), 39 (f), 45, has been inserted by Constituent Assembly in the Constitution. Keeping in mind the object of the paper, researcher will concentrate only on Article 23. It restricts traffic in human being and beggar and other similar forms of forced labour and any contravention of this provision shall be an offence punishable in accordance with law<sup>18</sup>. However, State could impose compulsory service for public purposes without any discrimination on grounds of religion, race, caste or

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<sup>10</sup> Poverty is one of the reasons of children trafficking. Because of poverty number of people in India sale their children to others with the illusion that the child will hereafter live a life of luxury.

<sup>11</sup> The UN Human Rights Commission reported in 1993 that more kidneys were sold in India than anywhere else to buyers from developed countries with an estimated 4,000 kidneys being sold.

<sup>12</sup> A labour purpose here means use of children in domestic works, bonded labour, mines, carpet and garment industry etc.

<sup>13</sup> Thousands of children are trafficked for entertainment purposes e.g. for Circuses and Camel Jockeying.

<sup>14</sup> Million of children being trafficked globally each year, who are used as Camel Jockeys, most of them below 10 years of age. According to May 2005 Report by Anti Slavery International, a British NGO, hundreds of children are trafficked to the United Arab Emirates (UAE) to work as camel jockeys each year. A majority of the boys come from Sudan, Pakistan and Bangladesh. (at *Combat Law*, Vol.5, Issue-3, June-July, 2006 '*Jockeys of Daeth in the Desert Spectacle*').

<sup>15</sup> Prostitution means the sexual abuse of persons for commercial purposes. (Section 2 (f) of the Immoral Traffic (Prevention) Act, 1956.

<sup>16</sup> Discrimination based on gender especially against women (*Black Law Dictionary*).

<sup>17</sup> Article 23 particularly prohibits Traffic in Human Beings and Forced Labour and makes it punishable under Suppression of Immoral Traffic in Woman and Girls Act, 1956, now known as the Immoral Traffic Prevention Act, 1986.

<sup>18</sup> Article 23 (1) of the Constitution of India.

classes or any of them<sup>19</sup>.

#### IV. Legislative Provisions for the Prevention of Children Trafficking

Though in recent time the legislature has passed many laws for the prevention of children trafficking, but the need for curbing this evil has been felt for a long time and hence Indian Penal Code has specified number of provisions like *Sections 366-A*<sup>20</sup>, *366-B*<sup>21</sup>, and *370*<sup>22</sup>, but some of sections of IPC have direct link with human trafficking, given as under:

#### V. Selling minor for purposes of prostitution<sup>23</sup>

“Whoever sells, lets to hire, or otherwise disposes of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or for any unlawful and immoral purpose, or knowing it to be likely that such person will at any age employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine”.

There are two explanations with Section 372. **Explanation 1:** If any person sells, lets to hire, any female under the age of eighteen years, to any person who keeps or manages the brothel, unless the contrary is proved, presumed to have disposed of her with the intention that she shall be used for the purpose of prostitution. **Explanation 2** explains the term ‘illicit intercourse’ it means sexual intercourse between person not united by marriage.

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<sup>19</sup> Article 23 (2) of the Constitution of India.

<sup>20</sup> Procuration of minor girl: whoever, by any means whatsoever, induces any minor girl under the age of eighteen years to go from any place or to do any act with intent that such girl may be, knowing that it is likely that she will be, forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extent to ten years, and shall be liable to fine.

<sup>21</sup> Importation of girl from foreign country: whoever imports into India from any country outside India or from the State of Jammu and Kashmir, any girl under the age of twenty-one years with intent that she may be, or knowing it to be likely that she will be forced or seduced to illicit intercourse with another person shall be punishable with imprisonment which may extend to ten years, and shall also be liable to fine.

<sup>22</sup> Buying or disposing of any person as a slave: \_ Whoever imports, removes, buys, sells or disposes of any person as a slave, or accepts, receives or detains against his will any person as a a slave, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine.

<sup>23</sup> Section 372 of Indian Penal Code, 1860.

## VI. Buying minor for purposes of prostitution<sup>24</sup>

Whoever buys, hires, or otherwise obtains possession of any person under the age of eighteen years with intent that such person shall at any age be employed or used for the purpose of prostitution or illicit intercourse with any person or any unlawful and immoral purpose or knowing it to be likely that such purpose with at any age be employed or used for any such purpose, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.

There are two explanations with Section 373 also, *Explanation 1* raises presumption against the person, who keeps or manages any brothel, if he obtains the possession of female under the age of eighteen years, then it will be presumed by court that female is here for the purpose of prostitution. *Explanation 2 'illicit intercourse'* has the same meaning as in section 372.

After the commencement of the Constitution, there was a need to enact a particular legislation for the prevention of immoral trafficking in persons, therefore Parliament of India passed *The Immoral Traffic Prevention Act, 1956*<sup>25</sup> with the object to make prostitution and trafficking in women and girls a criminal offence. The Act comprises 25 sections and is applicable in whole of India. Some of the sections of the Act directly deal with trafficking as Section 3 provides for the punishment for keeping a brothel or allowing premises to be used as brothel; Section 4 provides for punishment for living on earnings of prostitution; Section 5 provides for the punishment for procuring, inducing, or taking person for the sake of prostitution; Section 6 provides for the punishment for detaining person in premises where prostitution is carried on; Section 7 provides for the punishment for prostitution in or in the vicinity of public places; Section 8 provides for punishment for seducing or soliciting for the purposes of prostitution and Section 9 provides for the punishment for seduction of a person in custody.

It is true that one legislature has passed law for curbing the evil of child trafficking and executive is also trying its best. Now, it could not have been expected from the judiciary to remain as a silent spectator. To ensure the constitutionally guaranteed rights of the children, in *Laxmikant Pandey v. Union of India*<sup>26</sup>, the Supreme Court of India dealt with the adoption of children by foreigner and Indian parents. Court directed that a procedure can

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<sup>24</sup> Section 373 of Indian Penal Code, 1860.

<sup>25</sup> The Act came into force on the 1<sup>st</sup> May, 1958 vide GSR 269 dated 16-4-1958 published in the Gazette of India, Part-II, Section 3(i) p.203. Further the Act amended in 1986.

<sup>26</sup> AIR 1987 SC 232.

must be formulated which will definitely reduce the possibility of illegal sale of babies on the name of adoption.

*In Peoples Union for Civil Liberties v. Union of India*<sup>27</sup>, compensation was awarded to bonded child labour; child prostitute and the children of prostitutes. Justice Patel, in his address at Orissa on *Elimination of bonded labour System Workshop* said that trafficking of women and girls is one of the worst forms of forced labour and violation of human rights.

Again in 1990 Apex Court in a case of *Vishal Jeet v. Union of India*<sup>28</sup> issued directions to the CBI to institute an enquiry against those police officers under whose jurisdiction red light areas come, and to take immediate actions against those law-breakers.

## **VII. International Endeavours for the prevention of Children Trafficking**

For eradication of child trafficking, at international level number of conventions, declarations and protocols do exist. In the year of 1949 *Convention for the Suppression of the Traffic in Persons and the Exploitation of the Prostitution of Others* was held. The convention declares that prostitution and trafficking are inter-related to each other and against the theme of dignified life of human beings. The member states of convention promised to punish any person who, procures, entices or leads any children and women, for the purposes of prostitution.

In the year of 1950, *International Convention for the Suppression of Immoral Traffic in Persons* was signed in New York with the aim of prohibition of trafficking and prostitution. The Convention prohibits the trafficking in human beings and infringement of prohibition is to be offence and punishable by law<sup>29</sup>. Under Article 35 of the Convention, such a law has to be passed by Parliament as soon as may be after the commencement of the Constitution. Finally, Parliament of India ratified the Convention and passed *the Suppression of Immoral Traffic in Women and Girls, Act, 1956*, further amended in 1986 for the purpose of change the title of Act i.e., *The Immoral Traffic (Prevention) Act, 1956*<sup>30</sup>.

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<sup>27</sup> (1988) 8 SCC 425.

<sup>28</sup> (1990) 3 SCC. 18 and AIR 1990 SC 1412.

<sup>29</sup> Article 23 of the Convention.

<sup>30</sup> To enlarge the scope of the Act and to make penal provisions more stringent, Parliament of India changed the name of the *Suppression of Immoral Traffic in Women and Girls, Act, 1956* into *The Immoral Traffic (Prevention) Act, 1956*, in view of the widening of the scope of the Act to cover all persons whether male or female, who are exploited sexually for commercial purposes.

*The Declaration of the Rights of Children, held in 1959*<sup>31</sup> with the object to provide all the rights to children without any discrimination on account of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status<sup>32</sup>. The child shall be protected against all forms of neglect, cruelty and exploitation. He shall not be the subject of traffic, in any form<sup>33</sup>.

*U.N Covenant on Civil and Political Rights, 1966* was held with the aim to protect juvenile offenders from sexual exploitation, when they are in custody. Therefore Covenant declared that juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status, which in turn prohibits trafficking.

*In 1989, UN Convention on the Rights of Child*<sup>34</sup> was held with the object of creating responsibilities of the State towards their children. Some of the aspects of convention with the trafficking of children as the Convention outlaws illicit transfer of children from one country to another. Apart from that convention obliges the member states to take legislative, educational and other steps for the prevention of abduction and sale of children.

*The ILO Convention on the Worst Forms of Child Labour adopted in 1999* identifies child trafficking as a practice similar to slavery<sup>35</sup>.

According to *UN Convention against Transnational Organized Crimes, 2000*, trafficking attracted the attention of human rights practitioners, law enforcement officers and policy makers.

To supplement the UN Convention against Transnational Organized Crimes, on November 15, 2000, the United Nations General Assembly took a step towards coordinating an international response to human trafficking with adoption of *UN Trafficking Protocols* to prevent, suppress and punish trafficking in persons. From the above discussed facts, it is but obvious that International community played a really praiseworthy role.

### **VIII. Role of National Human Rights Commission for the prevention of Trafficking**

It will not be wrong to say that NHRC is working as a watch dog for the prevention of basic human rights. Time and again NHRC, through their reports show that inspite of anti-trafficking legislations, it is still prevalent in

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<sup>31</sup> The United Nations General Assembly adopted this declaration unanimously on 20<sup>th</sup> November, 1959.

<sup>32</sup> Principle 1 of the Declaration of the Rights of the Child, 1959.

<sup>33</sup> Principle 9 of the Declaration of the Rights of the Child, 1959.

<sup>34</sup> The U.N. General Assembly has adopted the Convention in December, 1989.

<sup>35</sup> Available at <http://www.ilo.org/ilolex/english/convdisp1.htm>.

the country. In view of the existing trafficking scenario and at the request of the UN High Commissioner for Human Rights as well as on the recommendations of the Asia Pacific Forum of National Human Rights Institutions, the National Human Rights Commission nominated one of its Members to serve as a Focal Point on Human Rights of Women, including Trafficking in 2001. Among the activities initiated by the Focal Point was an Action Research on Trafficking in Women and Children in India in the year 2002 in collaboration with UNIFEM and the Institute of Social Sciences, a research institute in New Delhi. The main focus of the Action Research was to find out the trends, dimensions, factors and responses related to trafficking in women and children in India. Besides, it looked into various other facets of trafficking, viz., the routes of trafficking, transit points, the role of law enforcement agencies, NGOs and other stakeholders in detecting and curbing trafficking. It also reviewed the existent laws at the national, regional and international level. The Action Research was completed in July 2004 and its Report was released to the public in August 2004. The recommendations and suggestions that emerged out of the Action Research were forwarded to all concerned in the Central Government, States/Union Territories for effective implementation. They were also requested to send an action taken report on the steps taken by them. In order that the recommendations and suggestions of the Action Research were implemented in true spirit, the Commission subsequently devised a comprehensive Plan of Action to Prevent and End Trafficking in Women and Children in India and disseminated the same to all concerned<sup>36</sup>.

Pained with the plight of children who were victims of trafficking, the Commission and the Prasar Bharati, with support from UNICEF, collectively prepared a Guidebook for the Media on Sexual Violence against Children. The main objective of the guidebook is to encourage media professionals to address the issue of sexual violence against children in a consistent, sensitive and effective manner, consonant with the rights and best interests of children. Further, to prevent cross-border trafficking, the National Human Rights Commission requested the Directors General of Police of Uttar Pradesh, Bihar and West Bengal to be vigilant about the issue. The National Human Rights Commissions of India and Nepal have prepared a Memorandum of Understanding (MoU) to prevent and check cross-border trafficking. However, the draft MoU is still pending with the Ministry of External Affairs, Government of India.

To spread awareness on prevention of sex tourism and trafficking, the Commission in collaboration with the UNIFEM and an NGO organized a one-day Sensitization Programme on Prevention of Sex Tourism and

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<sup>36</sup> Integrated Plan of Action to Prevent and Combat Human Trafficking with special Focus on Children and Women. (*see-* at [www.nhrc.nic.in](http://www.nhrc.nic.in), last visited on 28-10-2011).

Trafficking in the year 2003. The main objective of the programme was to sensitize senior representatives of the hotel and tourism industry on various issues relating to sex tourism and trafficking. A National Workshop to Review the Implementation of Laws and Policies Related to Trafficking was also organized in 2004 in collaboration with PRAYAS, A Field Action Project of the Tata Institute of Social Sciences, Mumbai to work towards an effective rescue and post-rescue strategy<sup>37</sup>.

## **IX. Conclusion**

Above facts shows that undoubtedly NHRC is playing a good role for the prevention of evil of trafficking. But I must say, until and unless government and NHRC do not step together, the problem of trafficking cannot be curbed completely. Unfortunately, our government is not very serious about this problem. The Asian Centre for Human Rights (ACHR) publishes its 2009 Annual Report on Human Rights in India challenges the working of as the Congress led United Progressive Alliance government. The 2009 ACHR annual report reveals that widespread human rights violations continue to take place across India.

Undoubtedly, offence of child trafficking is very grave; it has capacity to negatively affect the legal as well as moral fabric of the society. Therefore in my view there should be same punishment for child traffickers as for offences against the national integrity. It is also true that trafficking is organized crime and it is beyond the boundaries, but since our legislations has no extra territorial effects, therefore international community have to enact a common legislation for all nations with strict punishments. Apart from international efforts, national initiatives are equally important. The enforcement agencies like police need to work with the voluntary organizations and NGO's<sup>38</sup> who are working on anti-trafficking. Media should realize their duties, and have to play the supportive role. In my opinion, quality education for children and for their parents is need of the hour. No doubt role of judiciary is good enough but in reality, the persons who are actually responsible are moving in society with status and respectability. So there is need to punish those so called respectable persons. Last but not the least I have no hesitation to say that, we itself are somewhere responsible for child trafficking, legislature has done their job by enacting anti-trafficking legislation, now it our turn to perform their duties

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<sup>37</sup> www.Nhrc.nic.in last visited on 28-10-11.

<sup>38</sup> There are many Non-governmental Organizations are working in India for the welfare of children and against the evil of child trafficking, e.g. Child Aid Foundation and Association for Rural Development and Action Research (ARDAR).

like *Mr. Gaurav Jain*<sup>39</sup>. We have to change our attitude and have to fight against the trafficking and save our children from the hands of traffickers.

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<sup>39</sup> He had shown their concern for the betterment of children of prostitutes, therefore filed a Public Interest Litigation for providing separate schools for children of prostitutes. *Gaurav Jain v. Union of India*, AIR 1997SC 3021.