

NOTES AND COMMENTS

**Cataclysm within Cataclysm: Do Catastrophic Events
Impact Child Trafficking?**

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Abstract

India through her Constitution, legislation, and ratifications to the international conventions has always condemned the felony of trafficking. The Immoral Traffic (Prevention) Act was inducted in the year 1956 to protect humans from trafficking. Since then, hundreds of cases have been dealt with under the act, but the act remained silent on the most intensifying and escalating issue, i.e., trafficking during the disastrous events. India has faced striking catastrophes almost every two years and with that, the rise has been comprehended in trafficking. Children being easy targets were majorly trafficked from the battered regions. This raises the question as to whether India has taken preventive and protective measures with respect to the trafficking of children in catastrophic times. The paper is discussed on three planes: (1) Whether there is any law that specifically covers the protection of children from being trafficked during catastrophic events, (2) Whether the catastrophic events affect the number of children being trafficked and the intensity of trafficking during such events, (3) Whether the government has righteously approached the apprehension of trafficking during catastrophes. Last, of all, this paper scrutinizes the rescuing and restorative steps taken by the government as well as other organisations to protect the victims of trafficking. In conclusion, the paper put³ forth solutions that need to be implemented and evaluates the 2021 bill on the prevention of trafficking.

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I. Introduction

Trafficking is one of the gruesome tribulations of society. Trafficking doesn't only exploit the socio-civic rights of a human but also belittles the right to life. What's worse than trafficking is the trafficking of children. It can be understood as removing a child from their protective environment and plundering their vulnerability for purpose of exploitation. Though, the act remains hidden its effects can be perceived through the legal, social, and economic facets.

The onset of sudden disasters has amplified due to climate change which then increases the unexpected loss of land, lives, and any safety nets. The aftermath of any disaster is often displacement without enough financial resources thus allowing traffickers by luring them with job opportunities. Poverty and Feminization of Poverty are the main underlying factors in the trafficking of women and girls for Commercial Sex Exploitation. Poverty is an important factor for pushing people into trafficking as it exacerbates the other vulnerabilities, even if the poverty itself is not a fundamental factor leading to trafficking. Various "Plus" factors become the conjoining force that forces anyone into trafficking which can vary from "natural disasters and civil strife as well as community-family- and individual-level vulnerabilities."⁴ Trafficking is common in refugee camps or camp-like settings to provide shelter to displaced persons. These places become a target hub of the traffickers where criminal actors, sometimes, affected families also resort to trafficking to pursue relief from disaster. With climate change, continents and islands are on verge of submerging and facing livelihood risks, which may drive them to outmigration; as research published by International Organization for Migration (IOM) after Cyclone Aila in Bangladesh proved that victims of such disasters are vulnerable to trafficking.

When cyclone Aila struck the Sundarbans delta, it left labourers and daily wage workers impoverished. This led the families to send off their children as domestic

⁴ SOCIAL AWARENESS INSTITUTION, RESEARCH STUDY ON TRAFFICKING IN WOMEN AND GIRL CHILDREN FOR COMMERCIAL SEXUAL EXPLOITATION: AN INTER STATE EXPLORATIVE STUDY IN JHARKHAND, ODISHA AND WEST BENGAL (2016).

help in the Northern region. An interview was conducted by The New Indian Express of the village council, who explained the situation of child trafficking after cyclones as,

“Mostly girls are being trafficked in the name of giving jobs of domestic help exposing them to physical and psychological torture.”

Another study claimed that an already trafficking-struck region of the Philippines saw an escalation in the rates of trafficking after Typhoon Haiyan in 2013.⁵ During the Gorkha earthquake in 2015, Nepal was considered a hotspot for trafficking. Often, the children separated from their families were considered missing and orphans which makes them more vulnerable to trafficking. In other cases, when families couldn't support their children, they put them up for illegal adoption. As any kind of adoption is under the state's authority, illegal adoption can be understood as adoption without the state's authorized intervention. After an interview with parents who sent their wards after the 2015 earthquake in Nepal for a better life didn't hear from them again. They were made to believe that their children are being taken to a monastery in India where they will be educated.

*“We had to lie to police so that my son could leave the village with the Lamas,” said a parent of one of the children. “We are happy because the Lamas had promised to educate my son and send him home after three years.”*⁶

The Constitution of India has emanated the authority through Fundamental rights under Article 23 to curb trafficking. This article talks about the prohibition of trafficking in human beings and has distinctively covered the felony of forced labour and beggar. Article 24 prohibits the employment of children as labours which if read in continuance to Article 23 provides a stronger base for the prevention of child trafficking as children are often trafficked for labour. Any such violation of these articles is liable to move to the Court under Article 32 or 226 of the Constitution as well as the specific statutes enacted by the legislature.

The Immoral Traffic (Prevention) Act was legislated to invoke the obligations provided under the Articles mentioned above. It was enacted in 1956 to prevent

⁵ *Id.*

⁶ *Why child trafficking spikes after natural disasters – and what we can do about it*, THE CONVERSATION, (last visited August 28, 2021), <https://theconversation.com/why-child-trafficking-spikes-after-natural-disasters-and-what-we-can-do-about-it-53464>

and penalise the offence of trafficking. The Act has penalised the activities including keeping a brothel or a premise put to use as a brothel.⁷ This Act has also policed and penalised the various activities which are part and parcel of trafficking such as living on the earnings of prostitution;⁸ procuring, inducing or taking another person for prostitution;⁹ detaining another person on a premise where prostitution is being carried on;¹⁰ seducing or soliciting for prostitution,¹¹ and seducing a person in the custody.¹² The Act has also empowered the judicial magistrate to take cognizance and shut down the brothel as well as to evict the offenders from any such premise which is being used as a brothel.¹³

Trafficking has also been criminalized under the Indian Penal Code (IPC), 1860. Section 370 and 370 A of the IPC was introduced by the Criminal Amendment Act, 2013. Section 370 defines as well as elucidates all the acts that constitute the offence of trafficking and prescribes a detailed punishment. The propensity of punishment differs with the age and number of victims. Trafficking of more than one person and minor has been penalised with rigorous imprisonment of a minimum of 10 years. Furthermore, Section 370A prohibits the sexual exploitation of a trafficked person including minors. In addition to the abovementioned provisions, the other provisions of IPC have also penalised the acts including trafficking of human beings for habitual dealing in slaves,¹⁴ or procurement of minors to indulge them in employment, prostitution, or any other illicit acts.¹⁵

Trafficking has been a pandemic for which countries have put continuous efforts to regulate if not curb and yet, even the developed countries with the advanced economy are struggling with it. United Nations and other organizations like International Labour Organization, Amnesty International, and Human Rights

⁷ Immoral Traffic (Prevention) Act, 1956, § 4.

⁸ Immoral Traffic (Prevention) Act, 1956, § 4.

⁹ Immoral Traffic (Prevention) Act, 1956, § 5.

¹⁰ Immoral Traffic (Prevention) Act, 1956, § 6.

¹¹ Immoral Traffic (Prevention) Act, 1956, § 8.

¹² Immoral Traffic (Prevention) Act, 1956, § 9.

¹³ Immoral Traffic (Prevention) Act, 1956, § 18.

¹⁴ Indian Penal Code, 1860, § 371.

¹⁵ Indian Penal Code, 1860, § 372.

Watch have tried to provide a regulatory framework and conducted research studies in various countries to contain the growing trafficking of children.

II. International Background

Various international instruments have been implemented to protect humans from trafficking which include the United Nations Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children [hereinafter referred to as Palermo Protocol I] supplementing the United Nations Convention against Transnational Organized Crime (2000), and other accompanying conventions such as ILO Forced Labour Convention (Convention No. 29 of 1930), the ILO Abolition of Forced Labour Convention (Convention No. 105 of 1957), The Slavery Convention (1926), The UN Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (1949), and The International Covenant on Civil and Political Rights (ICCPR) which directly and incidentally prevents the practices related to slavery and human trafficking.¹⁶

Palermo Protocol I defines ‘*trafficking*’ as

“the recruitment, transportation, transfer, harbouring 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”.

The protocol continues to state,

“the recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered trafficking in person”. Here, the age of the child must be under 18 years.¹⁷

¹⁶ UNITED NATIONS HUMAN RIGHTS OFFICE OF THE HIGH COMMISSIONER, INTERNATIONAL INSTRUMENTS CONCERNING TRAFFICKING IN PERSONS (2014). https://www.ohchr.org/Documents/Issues/Women/WRGS/OnePagers/IntlInstrumentsc oncerningTraffickingpersons_Aug2014.pdf .

¹⁷ Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime, November 15, 2000. <https://www.ohchr.org/en/professionalinterest/pages/protocoltraffickinginpersons.aspx>

Palermo Protocol I came as a supplement to the United Nations Convention against Transnational Organized Crime addressing the lack of an international instrument to curtail trafficking in women and children. This protocol not only suggests the State take action against trafficking but also manoeuvres the restitution of the victims. While concerning the protection of children from trafficking, the Convention on the Rights of the Child (hereinafter as CRC), 1989, the Optional Protocol on the Sale of Children, Child Prostitution, and Child Pornography, 2000, and the Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, 1993 are the specific international instruments that deals with the issue.

CRC obligates the state under Articles 33 and 35 to prevent the trafficking of children.¹⁸ India obligated herself to protect children from trafficking for any purpose and ratified this convention on December 11, 1992.

India took the following steps after the ratification of CRC to curb the issue of trafficking in children.

1. The Department of Women and Child Development formulated a National Plan of Action to combat trafficking and commercial sexual exploitation of women and children in 1998. The fundamental objective was to prevent and rehabilitate women and children who have been victims of commercial sexual exploitation return back into society. This action plan was the first-ever National Policy initiated by the Government of India to combat trafficking.
2. CHILDLINE India Foundation got registered on January 10, 2000. It has been coordinating and managing the CHILDLINE Service-24x7 toll-free emergency helpline which is an outreach service for children who are in need of care and protection. CHILDLINE team approaches the children in need of care and protection as soon as they receive any information and endeavour to provide long-term rehabilitation to the children.
3. Juvenile Justice (Care and Protection of Children) Act, 2000 was also enacted which was later got amended in 2015 to comply with the standards set out in the United Nations Convention on Rights of the Child. Section 2 (d) (vii) of the Act defines a “child in need of care and protection” as a child

¹⁸ Convention on the Rights of the Child, November 20, 1989. <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CRC.aspx>

who has been found to be vulnerable and has a high chance to be inducted into trafficking or drug base.¹⁹

4. Swadhar scheme was also launched by the Government of India in December 2001 to rehabilitate and reintegrate the rescued trafficked girls. It has also extended its protection to the girls who ran away from brothels or other such places as well as to the victims of sexual crimes who were renounced by their families as beneficiaries. Under this scheme, the trafficked victims are provided with immediate shelter, food, clothing, and other essential needs. In addition to this, the scheme also offers to rehabilitate them socially and economically through counselling, clinical, legal, and other support to the beneficiary in need.
5. South Asian Association of Regional Cooperation (SAARC) introduced the Convention on Preventing and Combating Trafficking in Women and Children for Prostitution which has been signed by India on January 5, 2002, in furtherance of her objective of combating trafficking. The Convention encapsulated that trafficking in women and children for purpose of prostitution is violative of their human rights and antagonistic to their dignity and honour. It also called upon the states to criminalise the act of trafficking in any form in their penal laws.
6. On February 9, 2004, the Government of India adopted National Charter for Children, 2003 to ensure that no child is deprived of food, shelter, and other needs. Another fundamental approach of this charter was to ensure that every child has the right to protection against trafficking. The Charter obligated the State to enact measures and create an environment where no child is used for the purpose of trafficking and other illicit activities. Under this Charter, the State has also been obligated to ensure the speedy cognizance to reduce the number of girl victims and prompt help to girl children and ensure their right to protection from participating in prostitution.²⁰
7. The Commission for Protection of Child Rights Act (CPCRA), 2005 was legislated which laid down the foundation of the National Commission for Protection of Child in March 2007. The basic agenda of the commission was

¹⁹ Juvenile Justice (Care and Protection of Children) Act, 2000, § 2 (d) (vii).

²⁰ MINISTRY OF HUMAN RESOURCE DEVELOPMENT, NATIONAL CHARTER FOR CHILDREN, 2003 (2004). http://14.139.60.153/bitstream/123456789/362/1/Act-national_charter%20for%20children%202003.pdf

to ensure that child rights are being implemented in the country. The act obligated the Commission to examine the factors that impact the rights of trafficked children.

8. The Department of Women and Child Development was converted into the Ministry which goes by the name Ministry of Women and Child Development on January 30, 2006. With this shift, the Ministry undertook several initiatives and projects to fulfil the agenda of combating trafficking in the country. It has also been collaborating with the United Nations Office on Drugs and Crime, Regional Office for South Asia on human trafficking.
9. The Ministry of Home Affairs established the Anti-trafficking nodal cell in 2006 which acts as a primary point for communicating directives to states and union territories for effective enforcement of laws on the prevention of human trafficking. The cell has been conversing and cooperating with nations worldwide to tackle the issue of trafficking.

Various other initiatives were also taken by the government of India to address child trafficking in general and during catastrophic events. The same has been discussed in part 4 of the paper. This part also critically analyses the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021.

The issue of child trafficking becomes more prevalent during the disastrous events. Crimes are often piqued during catastrophic events making trafficking the most committed felony. Any natural disaster whether floods or earthquakes and pandemics or epidemics raises the risk of persons being trafficked. The economic deprivation of the families makes the children, especially minor girls, prey for trafficking.

III. Issue of Trafficking during Catastrophic Events in India

India being prone to natural calamities has seen various floods and landslides almost every year. In the absence of empirical studies on this topic, anecdotal evidence from various newspapers and articles has been collected from 2013 to 2021.

If it isn't bad to survive the tragedy, the worse lies ahead for women and children. India's most irreconcilable natural disaster was flooding in Uttarakhand in 2013. More than thousands of people were affected. People in the worst-hit districts lost everything from their life savings to their family members. Women and children

were prey to being trafficked as brides and sex workers.²¹ In the course report of the Training Programme on “Gender and Disaster Management” conducted by the National Institute of Disaster Management under the Ministry of Home Affairs, the disaster-struck areas were assessed on gender-related grounds. It has been reasserted that any disaster has a direct influence on gender. The report claims that during the 2014 floods in Jammu and Kashmir, women and girls felt that their Right to Privacy is being jeopardized. They have also felt threatened due to military bases and camps and with the reportage of gender violence in two villages of Jammu and Kashmir, the risks of human trafficking were also apprehended.²²

Women and children are at higher risk of being sold for slavery in hotels, restaurants, and even brothels. The 2016 floods in India’s eastern region risked more than 200,000 being trafficked.²³ During the 2017 floods in Assam, the then DIG (CID) and the nodal officer of the Anti-Human Trafficking Cell, Assam reaffirmed the sad reality of the vulnerability of women and children to trafficking during such events. As per an editorial, two girls were saved from being trafficked during these 2017 floods. Furthermore, the police arrested three men who befriended these girls and lured them to accompany them to New Delhi where they will get married. It was presumed that around 6 lakh children got affected by the floods.²⁴

During the 2019 floods in Assam, the issue of trafficking got worsened. According to a news article published on July 18, 2019, the Assam police rescued around 19 girls that were being trafficked to Gujarat in the disguise of work at a

²¹ *Women, children at risk of trafficking after Uttarakhand floods*, REUTERS, (last visited Aug. 28, 2021), <https://www.reuters.com/article/uttarakhand-floods-women-children-traffi-idINDEE96402V20130705>

²² *Id.*

²³ *India's deadly floods raise risk of women, children being sold into slavery*, REUTERS, (last visited Aug. 28, 2021), <https://www.reuters.com/article/india-floods-trafficking-idINKCN1111VT>

²⁴ *Assam's flood victims turn easy targets for trafficker*, THE TIMES OF INDIA, (last visited Aug. 29, 2021), <https://timesofindia.indiatimes.com/city/guwahati/assams-flood-victims-turn-easy-targets-fortraffickers/articleshow/59840120.cms>.

salary of Rs. 8000. Out of those 19 girls, ten were minor.²⁵ Most of the girls that were rescued belonged to poor families and from flood-prone areas.

Another such example is the cyclone Amphan in West Bengal, India. In the year 2020, when India was badly stricken by COVID-19, the cyclone Amphan worsened the crime rate ratio. The areas where the cyclone battered were also the hotspots of trafficking which obligated the West Bengal Commission for Protection of Child Rights (WBCPCR) to dedicate a special desk and helpline.²⁶

The COVID-19 pandemic has blurred the differences between global health crisis, economic inequalities, and crime rates. On September 9, 2020, 14 children were recovered from the old Delhi Railway Police station and 10 people were arrested involved in their intrastate trafficking.²⁷ Traffickers have exploited this global crisis for their benefit. According to Bachpan Bachao Andolan, 9000 children suspected of being trafficked were rescued across India between April 2020 and July 2021.²⁸

The police play an important role in controlling the growing issue of trafficking. Yet, there are various ethnographic research where police have been encouraging such acts like in this case,

“... sitting inside her brothel room, Priya (name changed), a migrant cis female adult sex worker, said that “[...] Police is the culprit here”. She shared an incident of the previous day that two policemen were harassing a customer and then the customer gave 1000 Indian Rupees to these Policemen. The police then allowed

²⁵ *Assam floods turn colleges into makeshift 'jail', trafficking activities see spurt as state battles fever, diarrhoea amid deluge*, FIRSTPOST, <https://www.firstpost.com/india/assam-floods-turn-colleges-into-makeshift-jail-trafficking-activities-see-spurt-as-state-battles-fever-diarrhoea-amid-deluge-7013051.html> (last visited Aug. 29, 2021).

²⁶ *Lockdown, Amphan render girls vulnerable in West Bengal*, THE HINDU, (last visited Aug. 29, 2021), <https://www.thehindu.com/news/national/other-states/lockdown-amphan-render-girls-vulnerable-inbengal/article32233610.ece>.

²⁷ *Delhi: Railway Police arrests 10 involved in child trafficking racket, 14 minors rescued*, INDIA TODAY, (last visited Aug. 29, 2021), <https://www.indiatoday.in/crime/story/delhi-railway-police-arrests-10-involved-child-trafficking-racket-14-minors-rescued-1720259-2020-09-09>.

²⁸ *Over 9k trafficked kids rescued by law enforcement agencies and BBA since beginning of Covid: KSCF*, OUTLOOK, (last visited Aug. 31, 2021), <https://www.outlookindia.com/newscroll/over-9k-trafficked-kids-rescued-by-law-enforcement-agencies-and-bba-since-beginning-of-covid-kscf/2120822>.

these customers to enter the brothel. She said the Police is a party in the business in that red light area. She also shared that usually work should be up to midnight or 1:00 am. But since the Police take rounds till midnight, there are very few customers who come before that midnight, due to the fear of harassment from the Police. Priya said that here the system is reversed as the market opens after 12 once the police gather their money and leave the place.”²⁹

In such instances, it becomes really difficult for any victim to seek help from law enforcement agencies. Another important agency that looks out for trafficking prevention is the Anti-Human Trafficking Units. These are integrated task forces comprising experts from the Police, Women and Child Welfare, and other pertinent departments of the State. These coherent units work in coordination with various stakeholders to prevent and combat human trafficking by confronting all the criminal aspects of human trafficking. The units also ensure that special emphasis is made out on the offence of human trafficking.

These special units carry out the rescue operations upon receiving information about activities related to trafficking from police, NGOs, civil societies, or any other credible source. These units work at the elemental level where they collect the crucial information which is required to preserve the sanctity of law and rescue the children from being trafficked.

The central government is also taking initiatives to help the AHTUs. The Ministry of Home Affairs (hereinafter referred to as MHA) released around Rs. 25.16 crores between the financial year 2010-11 and 2019-20 as a pecuniary aid to the state governments for setting up AHTUs in fifty per cent of police districts, i.e., in 332 Districts of the country. In 2020, the MHA released an amount of Rs. 100 crores under ‘Nirbhaya Fund’ to aid the states and union territories for improving and re-enforcing the existing AHTUs as well as setting up new such units in different districts.³⁰

²⁹ *Human Trafficking in India: How the Colonial Legacy of the Anti-Human Trafficking Regime Undermines Migrant and Worker Agency*, THE LONDON SCHOOL OF ECONOMICS AND POLITICAL SCIENCE, (last visited August 29, 2021), <https://blogs.lse.ac.uk/humanrights/2021/02/11/human-trafficking-in-india-how-the-colonial-legacy-of-the-anti-human-trafficking-regime-undermines-migrant-and-worker-agency/>.

³⁰ MINISTRY OF HOME AFFAIRS, INSTITUTIONAL MECHANISM FOR PREVENTING AND COUNTERING HUMAN TRAFFICKING AT STATE LEVEL (Dec. 1, 2020).

However, a national study was conducted on AHTUs in India (2010-19) which was carried out by Sanjog, a technical research organization, and Taftesh, a coalition of lawyers and activists. It was found that only fifty-one per cent of AHTUs were notified with all powers and resources whereas only twenty-seven per cent of AHTUs were functioning during the study.³¹

IV. Rescuing the Victims

The MHA on 12th August 2013 issued a Standard Operating Procedure (hereinafter referred to as SOP) to handle the trafficking of children and prescribed a set of measures that ought to be followed while rescuing the trafficked child.³² It has also specified the actions to be taken against the traffickers. The SOP recognized that trafficked children are vulnerable and in need of special care and protection including rehabilitative needs.

As per the SOP, the rescued child should be immediately sent to Child Welfare Committee. They should be given proper counselling by a social worker. It must be ensured that there is no kind of communication between the victim and the perpetrator. During the investigation, the prima facie objective should be repatriation and looking for the safety of the child. The police personnel are empowered to opt for any precaution and necessary act to fulfil the same. It is advised that victims must be provided with proper medical aid as soon as they are rescued. It is a mandate to have the victim's consent before any such medical examination. The Child Welfare Committees are obligated to secure the well-being of the children in their districts.

Before repatriating the child, an inquiry ought to be conducted to verify the home address and related information under the Juvenile Justice Act. The police are advised to take necessary action to obtain any relevant information from the

³¹ *Anti-human-trafficking units in India exist only on paper*, THE NEW INDIAN EXPRESS, (last visited Aug. 29, 2021), <https://www.newindianexpress.com/cities/delhi/2020/sep/01/225-anti-human-trafficking-units-in-india-exist-only-on-paper-2190943.html>.

³² MINISTRY OF HOME AFFAIRS, STANDARD OPERATING PROCEDURE TO HANDLE TRAFFICKING OF CHILDREN FOR CHILD LABOUR- MEASURES TO BE TAKEN FOR RESCUE OF TRAFFICKED CHILD LABOURERS' AND ACTION AGAINST THE TRAFFICKERS/EMPLOYERS (Aug. 12, 2013).

victim about the trafficker or anything related to the offence. Such information is required to be uploaded to the trafficking database maintained by the state/district.

The statement of the victim is to be recorded in accordance with Section 164 of the Code of Criminal Procedure, 1973. Additionally, a proper investigation must be inducted against the traffickers. AHTUs are also empowered to take any action required to investigate the offence of trafficking. Furthermore, the government has launched different schemes to help the victims. One such scheme is 'Ujjawala.' It is a comprehensive scheme formulated by the Ministry of Women and Child Development for the prevention of trafficking as well as rescue, rehabilitation, and reintegration of victims of trafficking for commercial sexual exploitation. This scheme aims to provide aid to women and children who are vulnerable to trafficking or have been victims of trafficking for commercial sexual exploitation. The scheme has two-fold objectives: firstly, prevention of trafficking through social mobilization and involvement of local communities, spreading awareness among the public through different events such as webinars, seminars, and other outreach activities. Secondly, the scheme focuses on rescue as well as rehabilitation of victims of trafficking. The rescued victims are placed in safe custody and are provided with other necessary amenities such as food, shelter, clothing, medical treatment, and vocational training.

The organizations that want to collaborate as an implementing agency under the scheme have to meet certain conditions to become eligible for the same including experience of the organization in the field of trafficking; registration under the law; providing basic facilities to assist the victims of trafficking; other facilities to comfort the victim.

This scheme has been categorized into five components, namely: prevention, rescue, rehabilitation, reintegration, and repatriation. The first three components have been explained above. Reintegration includes setting up of halfway home (home within the community) where victims get comfortable to integrate, stay, or work from that place. Albeit, according to the NALSA report submitted in the Prajwala case,³³ these homes have either been not set up or lack the proper facilities required for the rehabilitation of the victim. Further, every victim

³³ Report of National Legal Services Authority, Prajwala v. Union of India & Ors. W.P.(C) No. 56/2004, <http://uphome.gov.in/writereaddata/Portal/Images/NALSA-report.PDF>.

requires tailored support according to the circumstances they have been through but there is no professional help available for them.

Moreover, under its reintegration component, the scheme also bears the expense incurred in travelling the victim from the destination place to their hometown. But the aim of reintegration is not limited to reuniting the victims with their families. The goal is to reintegrate the victim into society. It requires in-depth policies which are framed by professionals to cater for the needs of all the victims. The ITPA was silent about the specific schemes for the formal education or vocational training of the victims. Although, The Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021 under sec.6(3) has mentioned specialised services and technical assistance which should be extended to the victims but doesn't deal with them in detail giving immense jurisdiction to the State Anti-Human Trafficking Committee.³⁴

The last component of the scheme, i.e., repatriation deals with cross-border trafficking. This scheme also covers the expense incurred in sending back the cross-border victim to their nation. Ironically, the victims have been prosecuted for violating the visa norms.³⁵ Albeit, in the 2021 bill, this issue has been dealt with under chapter VI- Repatriation and Reintegration of Victims. Under sec. 21(4),³⁶ the foreign nationals are ought to be provided legal aid and assistance, legal representation as well as any other support for their repatriation. Further, this sub-section doesn't limit itself to the repatriation of foreign nationals from India but also provides for the steps to be taken to facilitate the return of the Indian national who's present in a foreign country illegally or has been accused of any offence in the foreign country. This bill opens the door for all the victims of cross-border trafficking who couldn't return to India due to a lack of support. Furthermore, the timeframe has been provided in this chapter which is quintessential to scrutinise the actions of the National Investigation Agency towards the furtherance of this bill.

V. Compensating the Victims

The offence of trafficking being a serious attack on privacy and integrity of the body leaves a heavy toll on both minds as well as the body of the victim.

³⁴ The Trafficking In Persons (Prevention, Care And Rehabilitation) Bill, 2021, § 6(3).

³⁵ *Supra note 30 at 7.*

³⁶ The Trafficking In Persons (Prevention, Care And Rehabilitation) Bill, 2021, § 21(4).

Therefore, it becomes quintessential that all the victims are rehabilitated according to their specific needs. Various countries offer compensation to the victims of trafficking which serves as a helping hand in the rehabilitation of the victim. Though pecuniary compensation may not remove all the traumatic events that the victim has gone through, it could help them make it through their medical assistance or psychological recovery as required by the victim to reintegrate into society. Without any compensatory help, it can be easily anticipated that the pre-existing vulnerabilities that led the children to become victims of trafficking will exacerbate. Thus, the compensation prevents the already victimized children from being the victim of trafficking again.

Article 25 (2) of the United Nations Convention Against Transnational Organized Crime provides a legal base for the compensatory rights of the victims of trafficking. The provision requires that the States who are party to the convention should establish a procedure to render compensation to the victims. Also, Article 6 (6) of the Palermo Protocol I put an obligation upon the state party to the protocol that there should be a provision ensuring the right of the trafficked victim to claim compensation in the municipal legal system. There are different ways in which victims can be compensated. In India, victims of trafficking are compensated under the Central Victim Compensation Fund Scheme of the MHA as the ITPA is silent on compensation of victims. Under this scheme, a trafficked victim has entitled to a minimum amount of Rs. 1 lakh as compensation for the purpose of rehabilitation.³⁷ However, in fact, as few as one per cent of the trafficked victims have received compensation between 2011-2019. According to National Crime Records Bureau data, there were around 38,503 trafficked victims between 2011 and 2019, out of which only 107 applied for compensation from the concerned authorities.³⁸ Surprisingly, a survey conducted by the collaboration of lawyers with anti-trafficking NGO, Sanjog revealed that only seventy-seven victims received compensation between 2011 and 2019.³⁹ Additionally, most states have their victim compensation scheme which ranges from Rs. 1 lakh to Rs. 10 lakhs. During the catastrophic events including the Covid-19 pandemic,

³⁷ MINISTRY OF HOME AFFAIRS, CENTRAL VICTIM COMPENSATION FUND SCHEME (CVCF) GUIDELINES (Jul.13, 2016).

³⁸ *India had 38,503 victims of trafficking in 2011-19. Only 77 have got compensation*, THE PRINT, (last visited August 29, 2021), <https://theprint.in/india/india-had-38503-victims-of-trafficking-in-2011-19-only-77-have-got-compensation/365761/>

³⁹ *Ibid.*

thousands of trafficked survivors are left out of the safety net and become more economically vulnerable.

VI. Conclusion

The numbers of child trafficking cases are very difficult to enumerate as there has been no proper data that provide cases according to the age of the trafficked victims. Secondly, there is no legal provision under penal statutes that penalize the offence of child trafficking during catastrophes. A case of trafficking may get registered under more than one legal provision in the IPC and other special laws (the same case may get registered under Sections 370/370A, 366 A, 372, 373 of IPC and the ITPA), thereby making it difficult to enumerate the exact number of cases of trafficking in women and children. The Stanford University Report for the Asia Foundation has shown that the nature of trafficking differs among the different states of India.⁴⁰ States like Odisha which are more disaster-prone are on the verge of high trafficking rates and West Bengal being contiguous to other countries like Bhutan, Nepal and Bangladesh serves as a hub for international and interstate trafficking. To prevent the trafficking of children, it would be beneficial to have a body that works within the state and looks into the peculiar circumstances of the case. Such concern has been dealt with under the Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021. Under this bill, the government will be obligated to establish a State Anti-Human Trafficking Committee, especially for the emergence, rescue, protection, medical care, psychological assistance, recovery, relief, rehabilitation, repatriation, and reintegration of victims.⁴¹ The District Anti-Human Trafficking Committees shall also be constituted. Such committees are provided with the responsibility of rehabilitation as they are asked to 'submit an individual care plan for every victim and his dependent.' The bill under section 15 also obligates the executive to inspect 'all protection homes and rehabilitation homes or any other homes or centres or facilities set up or identified under this Act for housing victims' whereas no such provision has been provided under the current legislation. In chapter III of the bill, the District Legal Services Authority should provide some interim relief to the victim whereas, in the current statute, there is no such

⁴⁰ SADIKA HAMEED ET AL., CURRENT EFFORTS, AND INTERVENTION OPPORTUNITIES FOR THE ASIA FOUNDATION. REP. STANFORD UNIVERSITY'S FORD DORSEY PROGRAM IN INTERNATIONAL POLICY STUDIES.

⁴¹ The Trafficking In Persons (Prevention, Care And Rehabilitation) Bill, 2021, § 6.

provision. Furthermore, the bill discusses the trafficking of victims affected by a natural calamity or disaster which was ignored in the current statute. Conclusively, the issue of trafficking especially during catastrophic times requires political support to not only implement the legislation but also to act on repatriation of the victim of international trafficking as well as to provide adequate compensation to the victims. The ratification of this bill is the need of the hour as it covers the lacunas of the ITPA.