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REFERENCE NOTE

No. 6/RN/Ref./November /2014

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HUMAN TRAFFICKING

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HUMAN TRAFFICKING

1. INTRODUCTION

Trafficking in persons is a serious crime and a grave violation of human rights. Every year, thousands of men, women and children fall into the hands of traffickers, in their own countries and abroad. Almost every country in the world is affected by trafficking, whether as a country of origin, transit or destination for victims¹.

Human trafficking has been identified as the third largest source of profit for organized crime, following arms and drug trafficking, generating billions of dollars annually at the global level. An estimated 6,00,000 to 8,00,000 women and children are trafficked. This estimate does not include those trafficked within their own countries or missing children².

Women and children are generally trafficked for Begging, Organ Trade and Drug smuggling, Bonded labour, Domestic work, Agricultural labour, Construction work, Carpet Industry, Forced prostitution, Sex Tourism, Pornography and also for entertainment and sports which include Beer Bars, Camel Jockey, Circus Troops³.

2. WHAT IS HUMAN TRAFFICKING?

Article 3, paragraph (a) of the *Protocol to Prevent, Suppress and Punish Trafficking in Persons* defines Trafficking in Persons 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. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

¹ <http://www.unodc.org/>

² Human Trafficking in South Asia by Vinod K. Bhardwaj and Sherap Bhutia (2014), p.37

³ *Ibid.* p.3

3. ELEMENTS OF HUMAN TRAFFICKING

On the basis of the definition given in the Trafficking in Persons Protocol, it is evident that trafficking in persons has three constituent elements:-

The Act (What is done) – Recruitment, transportation, transfer, harbouring or receipt of persons

The Means (How it is done) – Threat or use of force, coercion, abduction, fraud, deception, abuse of power or vulnerability, or giving payments or benefits to a person in control of the victim

The Purpose (Why it is done) – For the purpose of exploitation, which includes exploiting the prostitution of others, sexual exploitation, forced labour, slavery or similar practices and the removal of organs⁴.

4. LEGISLATIVE FRAMEWORK ON HUMAN TRAFFICKING

Constitution of India

There are three articles spread over the Constitution of India in Part-III and Part-IV which deal with Fundamental Rights and Directives Principles of State Policy (DPSP). Article 23 of the Constitution of India is a Fundamental Right which prohibits trafficking in human beings and forms, of forced labour and Article 39(e) and 39(f) which are DPSPs direct at ensuring that health and strength of individuals are not abused and that no one is forced by economic necessity to do work unsuited to their age or strength and also states that childhood and youth should be protected against exploitation.

Immoral Traffic Prevention Act, 1956

It is the only legislation which specifically addresses Trafficking and is currently pending amendment. It penalizes trafficking of women and children for commercial sexual exploitation.

Other Legislations

There are some more legislations which directly or indirectly deal with human trafficking like:- Indian Penal Code, 1860; Bonded labour system (Abolition) Act, 1976; Child labour (Prohibition and Regulation) Act, 1986; Juvenile Justice Act, 2000; Goa

⁴ *op.cit.* unodc.org/

Children Act, 2002; Prohibition of Child Marriage Act, 2006⁵ and Protection of Children from Sexual offences (POCSO) Act, 2012⁶.

The Criminal Law (Amendment) Act 2013 has come into force wherein Section 370 of the Indian Penal Code has been substituted with Section 370 and 370A (IPC) which provide for comprehensive measures to counter the menace of human trafficking including trafficking of children for exploitation in any form including physical exploitation or any form of sexual exploitation, slavery, servitude or the forced removal of organs⁷.

5. REPORTED INCIDENTS OF CRIME

A total of 3,940 incidents of crimes under various provisions of laws relating to human trafficking were reported in the country during the year 2013 as compared to 3,554 during the year 2012 recording an increase of 10.9% during the year 2013.

A look into the incidences of human trafficking shows that there is a trend of steady rising of such cases during the period from 2009–2013. From 2,848 cases relating to human trafficking reported during 2009, it rose to 3,422 cases in 2010. It further rose to 3,517 cases in 2011, 3,554 cases in 2012 and 3,940 cases in 2013⁸ as shown in table⁹ below.

Crime head-wise incidence of various crimes under human trafficking during 2009 - 2013 and percentage variation in 2013 over 2012

Sl. No.	Crime head	Year					Percentage variation in 2013 over 2012
		2009	2010	2011	2012	2013	
1.	Procurator of minor girls (Sec. 368-A IPC)	237	679	862	809	1,224	51.3
2.	Importation of girls from foreign country (Sec. 368-B IPC)	48	36	80	59	31	-47.5
3.	Selling of girls for prostitution (Sec. 372 IPC)	57	130	113	108	100	-7.4
4.	Buying of girls for prostitution (Sec. 373 IPC)	32	78	27	15	6	-60.0
5.	Immoral Trafficking (Prevention) Act 1956	2,474	2,499	2,435	2,563	2,579	0.6
Total		2,848	3,422	3,517	3,554	3,940	10.9

⁵ *op.cit.* Human Trafficking in South Asia, p.3-6

⁶ India. Lok Sabha Unstarred Question NO.1879 dated 22.7.2014

⁷ Added by Ministry of Home Affairs during vetting

⁸ India. Ministry of Home Affairs, Report, Crime in India, 2013, p.99

⁹ *Ibid.* p.103

6. UNITED NATIONS OFFICE ON DRUG AND CRIME (UNODC's) Response to Human Trafficking

The UNODC offers practical help to States, not only helping to draft laws and create comprehensive national anti-trafficking strategies but also assisting with resources to implement them. States receive specialized assistance including the development of local capacity and expertise, as well as practical tools to encourage cross-border cooperation in investigations and prosecutions.

The adoption in the year 2000 by the United Nations General Assembly of the *Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children* marked a significant milestone in international efforts to stop the trade in people. As the guardian of the Protocol, the UNODC addresses human trafficking issues through its Global Programme against Trafficking in Persons¹⁰.

7. GOVERNMENT MEASURES AGAINST TRAFFICKING

Project on “strengthening the law enforcement response in India against trafficking in persons through training and capacity building”:

The Government of India through the Ministry of Home Affairs, in association with the United Nations Office on Drugs and Crime has initiated a two year project for training of Law Enforcement Officers on human trafficking in four States, namely Maharashtra, Goa, West Bengal and Andhra Pradesh. A Project Steering Committee has been constituted for steering, guiding and monitoring of the project. Through a series of training programmes, the project will raise awareness of Law Enforcement Officers (police & prosecutors) on the problem of human trafficking and further build up their capacity to better investigate the crime and prosecute the offenders perpetrating such crime¹¹.

Coordination Meetings

The Ministry of Home Affairs conducts regular coordination meetings with the Nodal Officers of Anti Human Trafficking Units of all States/UTs. Since 2007, eighteen Coordination Meetings have been held and minutes of these meetings are available at

¹⁰ *op.cit.* unodc.org/

¹¹ <http://mha.nic.in/ATCnew>

web portal (*stophumantrafficking-mha.nic.in*). These meetings have been very instrumental in according priority to the crime of human trafficking at the ground level and for effective Inter-State coordination and have been a success as the Government has been regularly monitoring the implementation of the (AHTUSs) and the Ministry of Home Affairs outlines various action areas to each State which becomes the focus of the work in these States. The Nodal officers' meetings has also led to exchange of information among various States and strengthening of inter-State investigations.

IGNOU Certificate Course

To develop a comprehensive and functional understanding on anti human trafficking and coordination amongst learners about various stakeholders/agencies associated with the process of human trafficking directly and to build awareness and practical skills in the area of law, policies, rehabilitation and prevention aspects of human trafficking, a Certificate Course has been launched by Indira Gandhi National Open University (IGNOU) in partnership with the Ministry of Home Affairs. The said course has been made mandatory for the Officers/Officials who are dealing with the subject of human trafficking. In this regard an advisory dated 12 January 2011 had been issued. Total 960 persons have been enrolled in the said course and 21 applicants have passed this course.

Bilateral mechanism with Bangladesh

The Ministry of Home Affairs, the Ministry of Women and Child Development and the UNICEF prepared draft protocol and Standard Operating Procedure (SOP) for dealing with cross border trafficking between India and Bangladesh to address the various issues relating to prevention of Trafficking, Victim Identification and Repatriation and make the process speedy and victim-friendly. Two bilateral meetings between India and Bangladesh have already been held to discuss the protocol. A Task Force of India and Bangladesh was constituted. First Task force meeting between Task force, India and Bangladesh was held in Delhi, India on 18 and 19 October 2010. Second meeting of the Task Force was held on 8 and 9 April, 2012 at Kolkata. Third meeting of the Task Force was held at Cox's Bazar, Bangladesh on 8 and 9 December 2012. Fourth meeting was held on 6 and 7 April 2014 in Mumbai.

Implementation of International Conventions on Trafficking

India has ratified the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. The Regional Task Force (RTF) of SAARC for implementation of the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution met for the first time in New Delhi on 26 June 2007 in New Delhi, second time in July 2008 and third time on 28 and 29 May 2009 at Shimla. The main achievement of this Conference has been the adoption of the SOP on combating Trafficking in Women and Children for Prostitution by all SAARC Member States. During the Special Session of RTF for implementation of the SAARC Convention at Kathmandu in April 2010 decision has been taken regarding Uniform Toll free number for women and children. Fourth Meeting of the RTF was held in Kabul, Afghanistan from 25 and 26 November 2011. Fifth meeting of the RTF was held in Paro, Bhutan from 11 and 12 April 2013¹².

Anti Trafficking Cell

A Nodal Cell has been set-up for dealing with matters relating to trafficking in human beings. The Cell is, *inter-alia*, responsible for collecting and analyzing the data related to trafficking from the State Governments/UTs Administrations, identifying problem areas and analyzing causes for their being source/transit/destination areas, monitoring the action taken by the State Governments/UT Administrations.

Anti – Human Trafficking Units (AHTUs)

The Ministry of Home Affairs is implementing a comprehensive scheme of “Strengthening law enforcement response in India against Trafficking in Persons through Training and Capacity Building”, wherein it is proposed to establish 330 Anti-Human Trafficking Units (AHTUs) throughout the country and impart training to 10,000 police officers through Training of Trainers (TOTs) component in three years. The Ministry of Home Affairs released funds for the same. The details of financial assistance provided to the States for establishing AHTUs is given in the **Annexure**.

¹² *op.cit.* Added by Ministry of Home Affairs during vetting

Judicial Colloquiums

Judicial Colloquiums are being held throughout the country to sensitise the Magistrates and Judges as to how women and children experience the process of law relating to trafficking, to enable the Magistrates and Judges to take proactive decisions and exercise discretion as provided under the law that will be most beneficial and just to the victim but most stringent to the trafficker. So far, 8 Judicial Colloquiums have been held.

Study Tour for SAARC Member States in India

During the 5th meeting of the Regional Task Force held in Paro, Bhutan from 11 to 12 April 2013, India offered to organize a study tour for the SAARC Member States to learn from the experiences of the Integrated Anti-Human Trafficking Units established in various districts of the country. The said study tour was organized in India from 18 to 22 November 2013 where representatives of Bhutan, Sri Lanka and Afghanistan participated.

Advisory/Standard Operating Procedure (SOP) to the State Governments on Human Trafficking

The Government of India has issued the exhaustive and consolidated advisories enumerating various steps for improving effectiveness in tackling the crime of human trafficking and increasing the responsiveness of the law enforcement machineries from time to time to all States/UTs. In addition, a Standard Operating Procedure (SOP) to handle trafficking of children for child labour and measures to be taken for rescue of trafficked child labour and action against the traffickers/employers was issued on 12 August 2013. The main points of the SOP are:

- (i) The Anti Human Trafficking Units (AHTUs) shall take all necessary steps to investigate all the cases relating to trafficked persons with special emphasis on organized crime and to target the economics of crime syndicates through sealing, attachment and confiscation of property etc.
- (ii) The rescue team should be multi-disciplinary and should comprise representative of Police or Labour, SDM or his representative, NGO/complainant, lady police/volunteer, and member of Child Welfare Committee.
- (iii) The repatriation of the child should be a prime objective in the investigation to ensure that the child goes back to safety.

- (iv) The statement of victim should be recorded under Section 164 of CrPC and charge sheet be filed soon after investigation.
- (v) There should also be an inquiry for home verification under the Juvenile Justice Act before the repatriation and the Child Welfare Committee in the home district shall be responsible for the well being of the child.
- (vi) The Labour Department should initiate proceeding for an immediate recovery of the fine of 20,000 and the said amount shall go to the Rehabilitation Cum Welfare Society of Child Labour in the native district of the child for his/her socio-economic and educational rehabilitation.
- (vii) The Department of Labour shall also initiate proceeding for the recovery of the back wages of the child as per the Minimum Wage Act, 1948.

Web Portal on Anti-Human Trafficking

A Web Portal on Anti Human Trafficking (*stophumantrafficking-mha.nic.in*) has been launched on 20 February 2014 which will be a vital IT tool for sharing of information across all stakeholders, States/UTs and civil society organizations for an effective implementation of Anti-Human trafficking measures¹³.

Ujjawala Scheme

The Ministry of Women and Child Development is implementing “Ujjawala” – a Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation, Re-integration and Repatriation of Victims of Trafficking for Commercial Sexual Exploitation. As on date, 276 projects have been supported by the Ministry, under which 153 rehabilitative homes have been sanctioned which can accommodate nearly 6450 victims. The Schemes provide for shelter, food, clothing for victims, counselling, medical care, legal and other support, vocational training and income generation activities. Trafficked victims are also given shelter in Short Stay Homes and Swadhar Homes, meant for women in difficult circumstances.

Integrated Child Protection Scheme(ICPS)

The Integrated Child Protection Scheme(ICPS) extends the services like - emergency outreach services through Childline toll free number 1098, open shelters for children in need in urban and semi urban areas, support for family bases non-

¹³ India. Ministry of Home Affairs, Annual Report, 2013-14, pp.80-82

institutional care through sponsorship, foster care, adoption and after care and institutional care for children and juveniles¹⁴.

CONCLUSION

Trafficking in human beings, especially children, is a form of modern day slavery and requires a holistic, multi-sectoral approach to address the complex dimension of the problem. It is a problem that violates the rights and dignity of the victims and therefore requires essentially a child rights perspective while working on its eradication.

In the fight against trafficking government organizations, non-governmental organizations, civil society, pressure groups, international bodies, all have to play an important role. Law can not be the only instrument to take care of all problems¹⁵.

¹⁴ *op.cit.* LSUSQ NO. 1879 dated 22.7.2014

¹⁵ *op.cit.* Human Trafficking in South Asia, p.16

ANNEXURE

**FINANCIAL ASSISTANCE PROVIDED TO THE STATES FOR SETTING UP
ANTI HUMAN TRAFFICKING UNITS
DURING 2010-11 & 2011-12**

State	No. of AHTU's Sanctioned in 2010-11	Amount Sanctioned in 2010-11 @ 7,58,000 per AHTU	No. of AHTU's Sanctioned in 2011-12	Amount Sanctioned in 2011-12 @ 7,58,000 per AHTU
Andhra Pradesh	5	37,90,000	5	37,90,000
Arunachal Pradesh	3	22,74,000	3	22,74,000
Assam	5	37,90,000	5	37,90,000
Bihar	7	53,06,000	7	53,06,000
Chattishgarh	4	30,32,000	4	30,32,000
Goa	1	7,58,000	1	7,58,000
Gujarat	5	37,90,000	5	37,90,000
Haryana	3	22,74,000	3	22,74,000
Himachal Pradesh	2	15,16,000	2	15,16,000
Jammu & Kashmir	4	30,32,000	3	22,74,000
Jharkhand	4	30,32,000	4	30,32,000
Karnataka	5	37,90,000	4	30,32,000
Kerala	3	22,74,000	3	22,74,000
Madhya Pradesh	8	60,64,000	8	60,64,000
Maharashtra	6	45,48,000	6	45,48,000
Manipur	2	15,16,000	2	15,16,000
Mehgalaya	2	15,16,000	1	7,58,000
Mizoram	2	15,16,000	1	7,58,000
Nagaland	2	15,16,000	2	15,16,000
Orissa	6	45,48,000	6	45,48,000
Punjab	4	30,32,000	4	30,32,000
Rajasthan	6	45,48,000	6	45,48,000
Sikkim	1	7,58,000	1	7,58,000
Tamil Nadu	6	45,48,000	6	45,48,000
Tripura	1	7,58,000	1	7,58,000
Uttar Pradesh	12	90,96,000	12	90,96,000
Uttarakhand	2	15,16,000	2	15,16,000
West Bengal	4	30,32,000	3	22,74,000
Total	115	8,71,70,000	110	8,33,80,000
Source: LSUSQ NO. 1933 dated 17.12.2013				