

Role of National Human Rights Commission in Rescue & Rehabilitation of Trafficked Victims: Addressing the Vulnerabilities

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The paper aims to appreciate the role of National Human Rights Commission in rescue and rehabilitation of trafficked victims in India. Human trafficking is a major cause and consequence of human rights violation across the world. It is essential to take measures to prevent and end trafficking in human for the protection of human rights. The majority presumes trafficking to be prostitution (not even forced prostitution) and fails to comprehend domestic servitude, sex labouring, agricultural labour, forced labour through debt bondage, kidnapping for training into beggary, and other forms of forced exploitation as trafficking. There are mainly four stages in Human Trafficking: recruitment, in which traffickers entice vulnerable people; finding transportation and weak entry points; prearranging deals with legal or illegal businesses; and exploitation. Hence, the crime is committed at the source point, several transit points, terminating at the destination, involving several offenders like recruiters, transporters, traffickers, harbours, exploiters, and conspirators. This paper aims to appreciate the role of awareness, observance and enforcement, over the law which gives it effectiveness. Laws are merely pieces of paper unless applied. In India, we are more concerned for that piece of paper and less bothered about its enforcement. Had law in itself be a cause of crime eradication than Indian Penal Code, which is in force for more than 150 years now should have stopped the occurrence of crime long back. Instead, more than 2.5 million crimes are registered under the IPC every year in the country and the figure is increasing relentlessly. The effective role of National Human Rights Commission with other government agencies like Ministry of Women and Child Development, Ministry of Home Affairs, and National Commission for Women have to work in one vision and draw up an Integrated Plan of Action to Prevent and Combat Human Trafficking with Special Focus on Children and Women.

Introduction

Human trafficking is the highest organized crime of world next to drugs & weapon trade. The world have recognised its grave concern and time and again affirm the actions against modern slavery. United Nations has for the first time by *Universal Declaration of Human Rights*, 1948 laid as the basic human rights guideline in the world which recognised in its preamble the inherent right of dignity and equality in all sense. *The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organised Crime (Trafficking Protocol)* that was adopted in the year 2000 and came into force in December 2003, The Government of India signed the Trafficking Protocol on 12 December 2002. This is a huge step forward in advancing the human rights of trafficked people as it not only prevents and protects the victims of trafficking but also punishes the traffickers. It encompasses the 1949 *Convention for the Suppression of the Traffic of Persons and of the Exploitation of the Prostitution of Others*, the *Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW)* and the *Convention on the Rights of the Child (CRC)*, all of which have been ratified by the Government of India. It would be pertinent to mention here that the Government of India has also ratified the two Optional Protocols to the Convention on the Rights of the Child – (i) on the Involvement of Children in Armed Conflicts and (ii) on the Sale of Children, Child Prostitution and Child Pornography. *The Convention on Preventing and Combating Trafficking in Women and Children for Prostitution devised by the South Asian Association for Regional Cooperation (SAARC)* in 2002, has also defined the term ‘trafficking’ as ‘the moving, selling or buying of women and children for prostitution within and outside a country for monetary or other considerations with or without the consent of the person subjected to trafficking’. The Government of India

has also ratified this Convention. The Constitution of India, Other fundamental rights enshrined in the Constitution relevant to trafficking are Article 14 relating to equality before law, Article 15 that deals with prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, Article 21 pertaining to protection of life and personal liberty and Article 22 concerning protection from arrest and detention except under certain conditions. The fundamental law of the land, forbids trafficking in persons. Article 23 of the Constitution specifically *prohibits "traffic in human beings and beggar and other similar forms of forced labour"*. Article 24 further prohibits *employment of children below 14 years of age in factories, mines or other hazardous employment*.

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. Giving adequate publicity, through print and electronic media including 'child lines' and women 'helplines' across the country about the problem of trafficking and its ramifications. Further NHRC also suggested certain steps to be taken in rescue of trafficking victims especially child victims. During the rescue operations, the Central and State Governments/Union Territory Administrations should consider:

- Taking effective measures for planning and devising a rescue strategy specifying victim friendly provisions and structures for trafficked victims who have been forced into brothel based and street-based prostitution.
- Creating a specialized cell for rescuing them at Centre/State/Block/District/Village level. This kind of paraphernalia would also facilitate in coordinating with other relevant departments and non-governmental organizations (intra and inter) for rescuing trafficked victims caught in brothel-based and street-based prostitution including children who have been trapped.
- Creating a confidential database on traffickers including probable traffickers, brothel owners, madams, *gharwalis*, etc. at all levels.
- Cultivating a network of informants who will provide specific information about trafficked women victims including child victims below 18 years who want to be rescued from brothels.
- Ensuring that rescue team should consist of both men and women police officers and representatives of non-governmental organizations/local inhabitants. Each member of the rescue team should be told about his/her role in the rescue operation and how the same is to be executed. They should also be told to maintain confidentiality and secrecy of the entire rescue operation.
- Taking due care by all concerned to ensure that trafficked women, particularly children, are not unnecessarily harassed or intimidated during the course of rescue operations. Adoption of humane and rights-based approach would go a long way in building the faith of the victims in the criminal justice system. This would also facilitate the overall rehabilitation, reintegration of the victims.
- Ensuring, in partnership with non-governmental organizations, that trafficked victims, including children, are provided access to legal, medical and counselling services. It should also be ensured that they are treated with dignity and not humiliated by the police, medical personnel or the court.
- Ensuring that any victim, including a child, who is rescued, is examined by a Registered Medical Practitioner for the purpose of age and for the detection of injuries/diseases. Trafficked victims should not be subjected to mandatory testing for diseases, including HIV/AIDS.
- Ensuring that, in cases where the victim rescued is not a child, she should not be *prima facie* treated as a criminal accused of soliciting clients. Steps should be taken to ensure that correct provisions of law are applied and that the FIR is not stereotyped.
- All efforts should be made to ensure anonymity and privacy of the victims during and after rescue.[1]

The NHRC has given the following directions to the State and Central Governments in rehabilitation and reintegration of trafficking victims with a special emphasis to the child victims. According to NHRC, The rehabilitation, reintegration and repatriation of victims of trafficking being a long process must be planned, taking into account the specific short and long-term needs of individual victims. Efforts must be non-punitive and aimed at protecting the rights of the victims. All stakeholders should therefore consider:

- Taking into account the specific short and long-term needs of each individual victim based on their age, education, skills, etc., the rehabilitation, reintegration and repatriation package for victims of trafficking should be worked out.
- Keeping in view the paucity of government run institutions as well as the deteriorating conditions of these institutions, there is need to identify names of fit persons and fit institutions for providing safe custody to victims of trafficking. This list should be made available to the police, courts, non-governmental organizations and civil society at large for information.
- Providing access to legal, medical and counselling services to all trafficked victims in order to restore their self-confidence and self-esteem. Special provision should be provided to those who have contracted HIV/AIDS.
- Enabling victims of trafficking to access both formal and non-formal education structures. Formal education should be made available to those victims who are still within the school going age, while non-formal education should be made accessible to adults.
- Providing gender sensitive market driven vocational training in partnership with nongovernmental organizations to all rescued victims who are not interested in education. Government and non-governmental organizations should also work together to develop partnership with public and private sector employers in order to provide training/facilitate work placement as part of the reintegration process. Due care should be taken to give ample choice to victims so that rehabilitation and reintegration becomes a holistic process, which respects their human rights.
- Involving the community in the rehabilitation, reintegration and repatriation process of trafficked victims. This means involving the families of victims and the community by enhancing their awareness about trafficking in general and the impact of trafficking on the individual.
- Monitoring the rehabilitation, reintegration and repatriation of rescued victims with the help of non-governmental organizations.
- Making available to rescued victims various developmental and anti-poverty schemes meant for the general population, both in the rehabilitation and reintegration phase.
- Upgrading the conditions and capacities of institutions/homes run by the Government and an increase in the number of such institutions/homes not only in the cities, but also at the district and taluka levels, are of utmost necessity.
- Recruiting adequate number of trained counsellors and social workers in institutions/homes run by the government independently or in collaboration with non-governmental organizations.
- Appointing trained social workers and counsellors at police stations, courts and
- Homes/institutions of different kinds meant for accommodating victims of trafficking.
- Anti-trafficking cells/units should be set up at the Centre, State, Block District and Village levels to facilitate and monitor the process of rescue, rehabilitation, reintegration and repatriation.[2]

Guidelines for Pre-Rescue, Rescue and Post-Rescue Operations

The *Ministry of Women and Child Development* and the *National Human Rights Commission* has prepared a protocol and guidelines[3] to be followed by both police and civil society at the time of conducting rescue operations.

1. Guidelines for State Governments

- Develop an Anti-Trafficking Policy specifying victim's friendly provisions and structures.
 - Create an Anti-Trafficking Cell at the State and District level to co-ordinate with other relevant Departments and NGOs on the issues pertaining to trafficking, especially on the rescue and rehabilitation of child victims of trafficking for commercial sexual exploitation.
 - Create a Database on traffickers, brothel owners, informants, decoy customers, number of cases registered, status of each case, source and destination areas in the State/District and any other relevant information. The information in the Database should be kept confidential and should be parted only to genuine information seekers.
 - Form Community Vigilant Groups (CVGs) at the Community Level. The CVGs can help in rescue and rehabilitation of victims at the community level.
 - Assign sufficient number of police personnel especially women Police personnel for the rescue operations.
 - Prominently display signboards in hotels, tourist places, restaurants, beaches, airports, bus stands, and railway stations and other susceptible places, warning people against trafficking and use of children for commercial sexual exploitation. In case, any child is seen under suspicious circumstances in these places, the informant should inform the Police/child line (1098) / NGO immediately.
 - Repatriate the victim from the Destination State to the Home State. The State would be responsible for transportation and the State Government would meet all expenses towards travel for the victim and escort, food and incidental. The State Government should provide and separate budget for repatriation of the victims.
 - Give adequate publicity, through both print and electronic media, on child-lines and women help-lines over a sustained period of time.
 - Declare names of fit people and fit institutions, where victims of trafficking can be kept in safe custody. The list should be circulated to all Police Head Quarters, Police Stations at State and District Levels, Courts and NGOs.
 - Declare fit institutions where mentally challenged or ill child victims and women can be kept in safe custody and proper medical treatment can be provided.
 - Issue directives that all Court proceedings related to child victims of trafficking are carried out in-camera.
 - Assign trained Child Welfare Officers in every Police Station.
 - Every Police Station should have separate clean and hygienic toilet (s) for women.
1. **For Rescue Team Members**
 2. **For Rescue of Trafficked Child Victims**
 - Cultivate networks of informants who will provide specific information about trafficked under-aged child victims (below 18 years) or woman willing to be rescued from brothels. Specific information may be in the form of letters, emails, photographs, personality traits, identification marks and scars, addresses, physical presence of relatives and people known to child victim, computer graphics generated by the description and mannerisms (e.g. accent, distinctive body language like frequent rubbing of fingers, blinking of eyes or any other). It is desirable, that a small remuneration is paid to the informant, which sustains their motivation.
 - Identify the child victim by the use of decoy customers and authenticate the available information. The decoy customer should try to motivate the child to talk on a one-to-one basis and to facilitate further rescue operations.
 - Involve NGOs and Social Workers in Rescue operations carried out by the Police or the Community.
 - Prepare a strategic plan for rescue operation with minimum loss of time. The plan should include:

- Compilation of all available valid information. For example, physical layout of the brothels and hideouts, specific characteristics of the location, etc. Seek help of key informants people such as petty-shop owners, sweepers, part-time maids, milkmen or any other persons who may provide their service to the brothels/hide-outs, local contractors and builders who would know the layout of the brothels/hide-outs.
 - Rescue team, preferably trained, should consists of the designated Special Police Officer as defined under Section 13 of Immoral Traffic Prevention Act, 1956, Assistant Commissioner of Police and/or District Commissioner of Police, police personnel including women, NGO representative and social worker. The number of rescue team members should be constituted depending on the size (number of brothels/victims) of the rescue operation.
 - Maintain confidentiality and secrecy of the rescue operation, all members of the rescue operation should gather at a commonplace or location at least 2 hours before the actual rescue operation.
 - To prevent leakage of information, prior to the actual rescue operation, mobile phones and any other mode(s) of communication belonging to the rescue operation team members should be taken in custody by the rescue team leader.
 - The strategy that would be adopted for the rescue operations and its various steps should be explained at this time. To each team member, explain his/her role in the rescue operation and clear any doubts that she/he may have.
 - Preparing key players: Formation of teams would depend upon the situation and targeted number of brothels to be covered and expected number of minors to be recovered.
 - Under no circumstances should the decoy customer(s) be exposed before, during and after the rescue operations.
 - Under no circumstances should the rescue operation be revealed to any person (s) other than those directly involved". If by any chance, the media does happen to get word of it, they should not be allowed to cover the rescue operation.
 - Check /verify vacancies available in Government and other certified Homes, so that the rescued victims can be taken to the appropriate Homes for safe custody. This should be done in total confidentiality, so that any information on the rescue operation is not leaked.
 - Before conducting rescue operations, all police formalities should be completed.
 - During the rescue operations, the rescue team members should not physically touch the girls, women, or their belongings. Only female members of the rescue team should deal with the victims.
 - During the rescue operations, no rescue team members should use abusive language towards the girls and women.
1. **Rescue Operation at a Community Level**
- The community should be sensitized about trafficking, the harm resulting out of this exploitative situation and what to do in case they have knowledge of such an incident. Community members should be motivated to keep a watch in the community for irregular movement of child victims to and from the area, their possible traffickers and hideouts.
 - The Community members should immediately provide information on suspicious people or to the nearest NGO working on rescue of trafficked victims. In absence of an NGO, the nearest police station may be informed.
 - Involve community group in rehabilitation of the victim, if he/she is from the same community.

iii. Strategy for Rescue Operations

- Planned rescue operations should be carried out on brothel communities.

- Place the rescue team members in strategic location as pre-planned for the rescue operation, before entering the brothel/community.
- Immediately go to the place/area where the child is being kept/confined.
- Remove the Child from the brothel/community as quickly as possible. He/She should collect all his/her belongings. In case, she has a child or children of her own, make sure that she is not separated from them.
- Treat the child victim with sympathy and not as a criminal.
- Remove any mentally-challenged or ill child victim or woman in the brothel, irrespective of their age.
- Be aware of your body language and do not make any unnecessary contact, unwelcome gesture, use physical force, cause physical harm, use vulgar or inappropriate language to any inmates of the brothel.
- Seize/collect all records showing expenses/income/payment/financial transactions and any other important document from the brothel owners, as they would form important piece of material evidence in the Court.
- Identification of the victims should be kept confidential, her name, address, photograph or any other information should not be published in any newspaper, magazine, news-sheet or visual media. This is mandatory as per Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2000.
- Identity and location of decoy customer should be kept confidential.
- The rescue team members should be accountable to the rescue team leader and any violation of the rights of the victim should be dealt in appropriate manner.

1. **Strategy for Post-Rescue Operations**

- Separate the victims by sight and sound from the accused. While taking the child victim to the Police Station, the child and brothel owners/traffickers should be taken in a separate vehicle. If this is not possible, they should be kept separate from each other. This is to prevent the accused from threatening or intimidating the child.
- Do not keep the child in the lock-up under any circumstances. The victim should be immediately taken to a certified place of safety after the raid. The victim is not an accused person and should not receive the same treatment as the accused. Keep her separately from the brothel owners/traffickers.
- Document the rescue operation in the diary, in presence of two independent reliable witnesses and get it signed by them for authentication.
- The First Information Report (FIR) should be immediately registered by the victims or NGO in the Police Station and it should contain details of location of crime, description of offence, victim and accused, chronology of crime right from the time the child was trafficked. The FIR should be as detailed as possible. The child should receive a copy of the FIR and it should be kept in safe custody of the NGO/Protective/children Home, where the child is kept.
- Invoke all relevant Sections of Indian Penal Code, 1860 and Immoral Traffic Prevention Act, 1956 and Juvenile Justice (Care and Protection of Children) Act, 2000 against the trafficker and brothel owners.
- Hand over the Child to a representative from the Protective/Children Home run by either the Government or NGO. The child should be counselled about her stay in protective custody and that she has been kept there for her safety and wellbeing.
- It is important to ensure that: 1) only plain-clothes police accompany the child to the Protective/Children Home; 2) the functionaries of the Protective/Children Home should ensure that the child does not come in contact with its traffickers, pimps, brothel owners or any such persons, who may have bad influence on him/her; 3) the medical examination, including age verification test is carried out properly and scientifically. The age verification test is mandatory as per Section 15 b (5A)

of Immoral Traffic Prevention Act, 1956 and Section 49 of Juvenile Justice (Care and Protection of Children) Act, 2000; 4) the child victim is produced before the Child Welfare Committee within 24 hours of taking him/her into custody. In case, the Child Welfare Committee is not available, then he/she should be produced before concerned Magistrate for relief; 5) the child has immediate access to standardized counselling, health care and legal aid. On behalf of the victim, the Personnel from the NGO, including Social Worker or Protective/Children Home should sign the *vakalatnama* (or the consent for a lawyer's representation); 6) a social worker accompanies the child whenever he/she leaves the place of safety; 7) a counsellor is present whenever and child is giving testimony in the Court; 8) the concerned Magistrate or the members of the competent authority as the case may be, visits the rescue home once in every fifteen days to conduct legal proceedings; 9) the child is prepared by explaining to him/her about court proceedings, so that he/she is aware of the procedures and is mentally well prepared. After every hearing of the case, the child should be informed about the court order, if any, so that he/she is kept fully updated on his/her case; and 10) it is recommended that trafficking cases be fast tracked under Speedy Trial to reduce the trauma and suffering of the child.

1. **Strategy for Rehabilitation (for functionaries in the Protective/Children Home)**

- Ensure that the child is informally welcomed and is introduced to other residents and shown around. She should be shown to her room and her locker where she can keep her personal belongings. It is advisable that for the first few days, she should be given space for privacy and if possible kept separately from the others or with those who have been rescued like her.
- Provide a welcome kit that includes a change of clothes, towel, undergarments, chappals/slippers and toiletries (soap, oil, hair brush/comb, tooth brush, paste, powder, rubber band, shampoo, sanitary napkins etc.), to the child on arrival.
- Explain to him/her the rules and regulation of the Protective/Children Homes and their objectives, once he/she settles down. This will make him/her feel comfortable and secure in his/her new environment. Also, explain to the child his/her responsibilities and duties during his/her stay in the Home.
- A registered medical doctor should examine the child for any ailments, allergies, skin rashes and psychological disorders or problems. Routine blood, urine, lung X-rays and stool tests should be carried out. In case, the child is suffering from any ailment, she should be given appropriate medication as prescribed by the doctor and there should be continuous follow-up on her condition.
- Talk to the child and find out whether he/she is interested in continuing with her education and accordingly, admit him/her to a regular school or make arrangements for non-formal education or tutoring so that she can catch up with his/her studies. In any case, the child should be given some basic education which will help his/her to be independent when he/she leaves the Home.
- Provide the child with vocational training, including marketing strategies that are marketable, sustainable and practical. (Please check that providing a child with vocational training and marketing strategies is not contravening any child rights or child labour laws).
- Prepare the Child for his/her repatriation/integration with his/her family. No rescued child should be sent back to his/her family without ensuring social acceptance, family support, to prevent re-trafficking and further exploitation. An adequate law enforcement response to trafficking is dependent on the cooperation and support of trafficked victims and other witnesses. In many cases, individuals are reluctant or unable to report traffickers or to serve as witnesses because of the fear that they would not only be harassed but also ill-treated.

Conclusion & Suggestions

In my opinion human trafficking is worst problem in India which is not focused by government concerned in their respective domain. It is unbelievable but true that neither law enforcement agencies nor legislature is seriously concerned about it. I would conclude my paper with the hope & suggestions that this is a black spot on our society which have to be properly tackled with greater responsibilities. My suggestions are in order that the trafficked victims and other witnesses shed their fears, the Government should consider:

1. Guaranteeing protection for witnesses and support to victims in law.
2. Making appropriate efforts to protect individual trafficked victims and other witnesses (including their families) during the investigation and trial process and any subsequent period when their safety so requires.
3. Appropriate protection programmes may include some or all of the following elements:
 - access to independent legal counsel;
 - protection of identity during legal proceedings;
 - in camera trials.
4. Deepening knowledge and understanding through sensitization and training programmes for judicial officers, law enforcement personnel (police, immigration, border control, customs officials, medical professionals/ personnel and labour inspectors) and other concerned government officials on the issue of 'trafficking' as well as 'gender and human rights'. These training and sensitization programmes could be organized in conjunction with the Ministries of Home Affairs, Women and Child Development, Labour, the National Human Rights Commission and the National Commission for Women.

[1] National Human Rights Commission Report, *Integrated Plan of Action To Prevent And Combat Human Trafficking With Special Focus On Women And Children*, (2006), p.22-23.

[2] Id., at p.23-24.

[3] Guidelines for Post-rescue Operations of Victims of Trafficking, Available at: < <http://icds-wcd.nic.in/INTEGRATEDPLANOFACITION.htm>> Visited on October 7,2017