

Stop Child Trafficking

A Handbook for
Parliamentarians





**FOR
SALE**

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Dear Parliamentarian,

There are over 400 million children in India. They constitute more than one third of the population of this country. They do not vote, yet, as citizens of this country, you are their representative. Today their survival is in danger, and they need your help and intervention.

Trafficking in human beings is rapidly becoming one of the most lucrative fastest growing transnational crimes generating approximately \$10 billion per year globally. Children are prime targets of this crime against humanity. Trafficking of children is a world-wide phenomenon affecting large numbers of boys and girls everyday. Children and their families are often lured by the promise of better employment and a more prosperous life far from their homes. Others are kidnapped and sold. Trafficking violates a child's right to grow up in a family environment and exposes him or her to a range of dangers, including violence and sexual abuse.

In India too, over the last decade, the volume of human trafficking has increased. Though the exact numbers are not known, it is one of the most lucrative criminal trades, next to arms and drug smuggling, undertaken by highly organised syndicates. In many cases this is in connivance with local officials and community leaders. Because of the very nature of this activity, it is hidden and hard to address.

Unless a public opinion is built, laws are effectively designed and implemented, the situation is constantly monitored and the nexus of traffickers is exposed, children will continue to be trafficked.

Coordinated efforts are required to stop and prevent child trafficking. Parliamentarians are key players in bridging political, governmental and civil concerns, and in uniting many partners in a common cause. Through specific steps

to advance public policy, awareness and response, it is possible to end the scourge of child trafficking, to hold the perpetrators of crimes of trafficking in children accountable, and to build a protective environment to keep children safe from harm.

As elected representatives of the people of this country, as leaders and as policy makers, you have an important role to play.

As elected representatives you are in a position to intervene at different levels - policy as well as direct action. This handbook has been developed to assist you in your task of assisting children and protecting them from abuse and exploitation.

The Handbook has been divided into Five Chapters.

- Chapter 1** deals with the definition of trafficking and the nature of the problem.
- Chapter 2** lists out purposes and forms of child trafficking. It is designed to help you clarify and build your understanding on the issue.
- Chapter 3** deals with the Indian legal framework that exists for trafficking and the gaps in it.
- Chapter 4** lists out international and regional commitments made by India.
- Chapter 5** has been designed to help you determine the action you may want to take.



Eleven-year-old Sarita (name changed) from Chuka Toli, about 30 km. from Ranchi, was a media highlight in 2003, not for getting the Bravery Award or any such achievement in life, but for being trafficked and sexually abused. Traced after about one and a half months since the trafficker duped Sarita and her mother into separation from each other, the child decided to fight for the injustice done to her. While the police wanted to treat her as 'case property' who could not be given back to her mother after the FIR was filed, the Court went ahead to punish the accused only for 'outraging the modesty of a woman'. The plea about treating it as a case of attempt to rape failed as there was distortion in recording the child's as well as her mother's testimony. The fear of court, presence of the accused right in front of the child during her evidence, lack of availability of an interpreter/translator were factors that affected the judgement. In fact the police and the court did not even consider the case as that of kidnapping, while the testimonies clearly spelled out facts to that effect. Lack of a comprehensive law and legal definition of trafficking to deal with all its forms and purposes besides prostitution, no understanding of the issue and unfriendly court procedures were the greatest obstacles in ensuring justice to Sarita.

Trafficking of children today assumes a large proportion of organised crime across the globe and in India too. Sarita is just one of the over 11,000 children who get traced out of an average of over 40,000 children reported missing in India every year. The National Human Rights Commission's Action Research on Human Trafficking, 2004, clearly indicates that most of these missing children are trafficked.

Defining Child Trafficking





The Oxford English Dictionary defines traffic as ‘trade, especially illegal (as in drugs)’. It has also been described as ‘the transportation of goods, the coming and going of people or goods by road, rail, air, sea, etc’. The word trafficked or trafficking is described as ‘dealing in something, especially illegally (as in the case of trafficking narcotics)’.

The most comprehensive definition of trafficking is the one adopted by the UN Office of Drugs and Crime in 2000, known as the “**UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children**”. Because this was adopted in Palermo, Italy, it is also often referred to as the Palermo Protocol or the Trafficking Protocol. For the first time, trafficking was defined as an **organised crime and a crime against humanity**. Although the Palermo Protocol provides the

most comprehensive definition, it is limited only to situations involving cross-border trafficking and does not cover trafficking that occurs within the countries. This is because it supplements the United Nations Convention against Transnational Organised Crime, 2000. However, this definition can definitely be adopted and adapted in the context of Indian law by making it applicable to trafficking within as well as across our national borders.

Definition Of Trafficking From The UN Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children (Palermo Protocol)

Article 3

- a) Trafficking in persons shall mean 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;
- b) The consent of a victim of trafficking in persons to the intended exploitation set forth in subparagraph (a) of this article shall be irrelevant where any of the means set forth in subparagraph (a) have been used;
- c) The recruitment, transportation, transfer, harbouring or receipt of a child for the purpose of exploitation shall be considered ‘trafficking in persons’ even if this does not involve any of the means set forth in subparagraph (a) of this article;
- d) ‘Child’ shall mean any person under eighteen years of age.

Some Working Definitions Used By Child Rights Campaigns And Organisations

Working definition of CACT¹

In 2001, a national campaign was launched in New Delhi against child trafficking. This was the Campaign Against Child Trafficking (CACT), which recognises children's needs as special, and feels the need to distinguish between trafficking in children and adults in order to work towards appropriate policy intervention and action. A child rights perspective is central to the campaign's vision and mission. CACT has adapted the following definition based on the Palermo Protocol:

"the recruitment, transportation, transfer, harbouring or receipt of persons below the age of 18 years, within or across borders, legally or illegally, by means of threat or use of other forms of coercion, of abduction, of deception, of the abuse of power or of position of vulnerability or, of the giving or receiving of payment or benefits to achieve the consent of such person, with the intention or knowledge that it is likely to cause or lead to exploitation."

The campaign decided that it was important to specify the age of the child within the definition.

The words 'legally or illegally' were inserted by CACT to cover all forms and purposes of trafficking in children, be it marriage that is valid or, adoption that has met all legal procedures and formalities.

This definition, further extended to cover both organised transnational and national crime, makes it more comprehensive.

Working Definition of Save the Children Alliance²

"all acts of recruitment, transportation, purchase, sale, transfer, receipt or harbouring of a person including a child (as defined by the United Nations Convention on the Rights of the Child and/or the applicable national laws of state parties) within or across borders that involve the use of deception, coercion (including the use or threat of force or the abuse of authority) or debt bondage, whether or not any payment is given or received, for the purpose of placing or holding such person in involuntary servitude (domestic, sexual or reproductive), in forced or bonded labour, in slavery-like condition or for false adoption".



¹ Campaign Against Child Trafficking (CACT), is part of the of the International Campaign against Child Trafficking (ICaCT) initiated by the International terre des hommes (tdh) Federation in Geneva and co-ordinated by tdh (Germany). In India, CACT adapted the Palermo Protocol to evolve its working definition of child trafficking in June 2001.

² Training Manual for Combating Trafficking in Women and Children
www.un.or.th/TraffickingProject/trafficking_manual.pdf

The basic elements of child trafficking

- 0 Majority of victims are children below 18 years.
- 0 Both boys and girls are equally vulnerable to trafficking.
- 0 There is no question of willingness or voluntariness in the case of children as they often do not know or understand the consequences or exploitation that may result.



- 0 Coercion or use of actual force, fraud, deception or allurement are some of the means used to traffic children.
- 0 There is abuse of authority.
- 0 Involvement of exchange of money or any other form of consideration.
- 0 Confiscation of travel documents or debt bondage.
- 0 Subjection to situations of abuse and exploitation either during the process of being trafficked or as a result of trafficking.

Points to remember...

- 0 Child trade is never for their well being
- 0 All involved, other than the victims, are assured of high returns with a low investment
- 0 Children who are exploited at a tender age become disempowered, illiterate and unskilled adults, thus perpetuating poverty
- 0 Trafficking of children is one of the worst manifestations of the violation of child rights. It is inextricably linked to the child's right to survival, development, protection and participation and must not be addressed in isolation.
- 0 Child Trafficking requires a concerted and holistic recognition of the gravity of the problem and action within the framework of the Constitution of India and the Convention on the Rights of the Child ratified by India in 1992.

THINGS TO KNOW...

While all forms of trafficking are exploitative, all exploitation of children is not a result of trafficking.

For instance, trafficking may occur for various types of exploitations such as sexual exploitation, debt bondage or other forms of bonded labour, forced labour, servitude, camel jockeying, begging, drug peddling, illegal adoption, for marriages etc.

At the same time not all cases of exploitation are cases of trafficking. For example, although children are trafficked for labour, not all cases of child labour are cases of child trafficking. Similarly, children are trafficked for marriage. Although all child marriages are violation of the rights of the child, they are not in all cases a result of trafficking.

Trafficking is not the same as migration or smuggling. Although often used interchangeably, it is wrong to do so.

Migration is usually movement of people from one place of abode to another; either from one district to another or one state to another or to a different country altogether. It may be seasonal and therefore temporary, or permanent. When people migrate outside their country, it may be legal or illegal.

Legal migrants carry relevant documents and papers whereas the illegal migrants cross the border secretly, without any legal documents like passport, visa etc., or with the help of fake documents.

Barriers to regular forms of migration cause people to seek out other illegal means of migration, including smuggling. This is also termed as migrant smuggling or smuggling of migrants.

Smuggling is defined as illegal import or export of goods/people across the borders of a country secretly without paying the custom duties or in contravention of some enactment, without proper legal documents or with fake documents. It is basically assisting someone for a fee to cross a border illegally.

Both the smuggler and the smuggled come to an understanding and mutually agree upon some consideration. Smuggling therefore does not require coercive or deceptive means.

Three basic differences between human smuggling and trafficking

Consent

The smuggling of clients/migrants involves clients/migrants who have consented to the smuggling
Trafficked victims, on the other hand, have either never consented

OR

if they initially consented, that consent has been rendered meaningless by the coercive, deceptive or abusive actions of the traffickers

Exploitation

Smuggling ends with the arrival of the clients/migrants at their destination

Whereas trafficking involves the ongoing exploitation of the victims in some manner to generate illicit profits for the traffickers

Transnationality

Smuggling is always transnational, whereas trafficking need not be

Trafficking can occur regardless of whether victims are taken to another country or only moved from one place to another within the same country

(United Nations Office on Drugs and Crime, 17.08.05
http://www.unodc.org/unodc/en/trafficking_victim_consent.html)

Nature of Child Trafficking





“Simply put, the ‘cost’ of buying and selling human beings is not very high, and the risks considerably lower than that of trafficking drugs or arms.

Arlacchi, Pino, United Nations Under-Secretary-General, Opening Statement to the International Seminar on Trafficking in Human Beings, Brazil, 28-29 November, 2000. [http://www.unodc.org/unodc/speech_2000-11-28_1.html, February 2005].

What Are Children Trafficked For ?

Given the criminal nature of the act, it is no surprise that there is very little data on the extent of trafficking. According to one estimate, 50 per cent of the trafficked victims worldwide are children.

Labour

- 0 Bonded labour
- 0 Domestic work
- 0 Agricultural labour
- 0 Construction work
- 0 Carpet industry, garment industry, fish/shrimp export as well as other sites of work in the formal and informal economy

Illegal Activities

- 0 Begging
- 0 Organ trade
- 0 Drug peddling and smuggling

Sexual Exploitation

- 0 Forced prostitution
- 0 Socially and religiously sanctified forms of prostitution
- 0 Sex tourism
- 0 Pornography

Entertainment and Sports

- 0 Circus, dance troupes, beer bars etc.
- 0 Camel jockeys

For and through Marriage

For and through Adoption

As child soldiers or combatants in armed conflicts.

Breaking Myths

Myth One: The child had consented

With children there is no question of consent. It is always coercion, threat or abuse, which is portrayed as consent.

The consent of a child is of no consequence as children are ill informed of what awaits them at the end by duping, trickery and fraud. The age of consent is thus vital. In reality, these are blame-the-victim arguments used to let the culprit go scot-free and shift the blame squarely on the child victim itself! The devious persuasions of powerful and patriarchal structures carry on unabated.

Myth Two: Family is always the safest haven for the child

The 'family' is a place of nurturance, protection and care for the child. Child protection is the primary duty of every family where a child is born. But that does not always happen. Today it is well established that child abuse and child trafficking often takes place with the connivance of the adult family members, especially the powerful men-folk who are the key violators of children. Children are seen as their parents' private property, who can be sold or bartered away in times of distress. But human rights of children are absolute and indivisible.

Myth Three: The 'problem' is 'out there', it doesn't affect me

It affects 'other' children not ours. In reality, in this fast-paced world the Internet has brought the Paedophile stalking our children in our homes! Websites devoted to pornography are using children in abusive contexts. How safe are our children from the organised mafia/syndicates/groups that are on the lookout for potential targets?

Moreover, kidnappers do not target only poor, starving children. It may be any unaccompanied child who is made the target. **The next child can be ours.**

The more we turn our face away the more the problem comes right back to us!

Can we afford to shut our eyes, our ears, and our conscience when we confront a child victim? If we do so, we perpetuate the crime and are party to it by this 'culture of silence'. In fact, this culture of silence only condones the heinous crimes that are meted out to *all our children*, not just their children!

- 0 Trafficking is a criminal act, shrouded in secrecy.
- 0 In the absence of a comprehensive and consistent definition of 'human trafficking' it is difficult to assess the magnitude of the problem and bring the traffickers to book.
- 0 Victims are often afraid to come forward, making it difficult to get accurate numbers and provide assistance.
- 0 Statistics may exclude those trafficked within national borders and often do not disaggregate trafficked victims by age and sex.

Impact of Trafficking on Children

"Trafficking abrogates a child's right to a healthy childhood and a productive, rewarding and dignified life. Child trafficking victims are subjugated and physically abused by the perpetrators: traffickers, employers, pimps, madams, and 'customers'. Trafficked children are often beaten and abused, and the violence occurs at all stages of the trafficking cycle".

Handbook for Parliamentarians No. 9 2005, Combating Child Trafficking, pg. 16, Inter-Parliamentary Union and UNICEF

The impact of trafficking on children is both long term and short term. It results in impacts that are physical and psychosocial.

The Training Manual for Combating Trafficking in Children³ brought out by the Inter-Parliamentary Union and UNICEF has identified the following impacts⁴ :

Emotional impact

- 0 Children who have been trafficked have reported feelings of shame, guilt and low self-esteem. They are frequently stigmatised.
- 0 They often feel betrayed, especially if the perpetrator was someone they had trusted.
- 0 These factors as well as the experience itself can cause nightmares, sleeplessness, feelings of hopelessness and depression. Some children who have been trafficked turn to substance abuse to numb their psychic pain, others have attempted suicide.

Physical impact

- 0 Children trafficked into prostitution, sex tourism or pornographic activities are susceptible to contracting sexually transmitted infections, including HIV/AIDS. There

³ www.unicef.org/protection/files/child_trafficking_handbook.pdf

⁴ *ibid.*

is a dangerous and mistaken belief in India is that sex with a virgin can cure HIV/AIDS or other sexually transmitted infections. This has led to even higher demand for young girls. Many women and girls report that 'customers' pay more for sex without a condom, and they – especially girls – are rarely in a position to insist upon condom use.

- 0 Children trafficked for labour, whether it is domestic work or any other industry or occupation, are vulnerable to physical as well as sexual violence. They are beaten, branded, deprived of food and other extreme forms of violence. They too are vulnerable to rape and sexual exploitation, and are at high risk of contracting HIV/AIDS.
- 0 Children trafficked for marriages are subjected to sexual and physical violence. There are instances in which they are subjected to forced labour in the marital home. Often, marriage is the first step towards further trafficking into prostitution.
- 0 Children trafficked for begging are maimed and tortured so that they can evoke sympathy. They too, are susceptible to physical and sexual violence. Children trafficked for begging are kept in a drugged state so that they do not escape.

Psychosocial impact

Children who are trafficked typically suffer effects adverse to their social and educational development.

- 0 Many have no family life and are forced to work at a young age. Without access to school or family support, and cut off from normal social activities, they fail to develop their potential. Also, under constant surveillance and restriction, they have little contact with the outside world and often do not have the possibility to seek help. When they are victims of physical and emotional violence and abuse, the effects may be life threatening and long term.
- 0 Normal development of an adolescent includes development of abstract thinking, views and beliefs about themselves, ability to think about others, ability to think critically and ability to think creatively. All these aspects of development are impacted upon negatively in case of trafficked adolescents as they are faced



with uncertainty and a feeling of helplessness; their identity is suddenly lost to the negative experiences of the abuse and trauma they suffer. Trafficking is an attack on the selfhood of the person and clearly affects how they perceive themselves.

They are neither happy nor sad. They develop a 'blunted' response to all the changes around them. Even when the context changes, i.e., they are 'rescued' and placed in a rehabilitation facility, the helplessness and withdrawal persist.

NHRC-UNIFEM-ISS, Action Research on Trafficking in Women and Children in India, 2002-2003

Psychological and emotional growth too is seriously impaired.

- 0 The thoughts and feelings of a trafficked person are permanently affected by her/his traumatic experiences. There is complete loss of trust in others, leading to difficulty in forming relationships, which affects their rehabilitation.
- 0 Withdrawal and isolation, disconnection from the world at large, indifference, dissociation, experimenting with drugs and alcohol, a whole range of psychiatric disorders are some of the common effects on trafficked persons.

Legal Framework And The Gaps



The Challenge...

- 0 There is no comprehensive law on 'human trafficking', covering all its forms and purposes.
- 0 None of the existing national laws or legal provisions define 'human trafficking' per se.
- 0 The Immoral Traffic (Prevention) Act, 1956, is the one and only one national legislation on trafficking in India. But the term 'trafficking' can only be found in its title and nowhere else in the content of the law. Moreover, the Act is limited to 'immoral' forms of trafficking i.e. prostitution.
- 0 The Goa Children's Act, 2003, is the only law that defines child trafficking, but this is just a State law and cannot be enforced countrywide.

All of these pose a serious challenge to any effort directed at putting an end to child trafficking.

What does the Constitution of India say...

The Indian Constitution prohibits and penalises human trafficking.

Article 23 and 39 of the Constitution of India clearly establish every citizen's right to freedom from exploitation of all forms.

Article 23 particularly prohibits traffic in human beings, 'begar⁵' and other forms of forced labour.



⁵ Begar is labour without payment. It is the equivalent to slavery.

National Laws

Despite a constitutional mandate, there is only one national law in the country framed specifically to deal with trafficking. This is the 'The Immoral Traffic (Prevention) Act, 1956 (amended in 1986)'. However, this law limits itself to addressing trafficking for prostitution.

The Indian Penal Code, 1860

The Indian Penal Code (IPC) deals with a range of criminal offences and provides

for criminal liability and prosecution of offenders. It is the main criminal law of the country.

There is no legal provision in the IPC specifically defining 'human trafficking' and laying down the criminal liability of persons responsible for the same.

Nonetheless, since trafficking involves use of means such as force, threat, assault, confinement, fraud, deception, cheating, kidnapping/abduction etc., certain provisions in the IPC relating to these can be applied appropriately in all cases of trafficking. These include:

- 0 Simple and grievous hurt (Sections 319 to 329);
- 0 Wrongful restraint and wrongful confinement (Sections 339, 340-346);
- 0 Criminal force and criminal assault (Sections 350 and 351);
- 0 Import / export / removal / buying / selling / disposing / accepting / receiving / detaining of any person as a slave (Section 370);
- 0 Habitual import / export / buying / selling / trafficking / dealing in slaves (Section 371);
- 0 Kidnapping and abduction (Sections 361, 362 and 363);
- 0 Kidnapping/abduction for wrongful confinement (Section 365);
- 0 Kidnapping/abduction for slavery or to subject a person to grievous injury (Section 367);
- 0 Fraud, cheating by personation, cheating, (Sections 41, 416 and 420);
- 0 Forgery and using forged documents as genuine (Sections 465, 466, 468 and 471);
- 0 Criminal intimidation (Sections 503 and 506);

Situations of cross-border trafficking can elicit application of the following sections in the IPC, in addition to those listed above:

- 0 Kidnapping and/or abduction for export (Section 360);
- 0 Kidnapping from India (Section 363);
- 0 Importation of girl from a foreign country (Section 366B);



As an organised crime there may be many more people involved in trafficking children.

Always remember that -

Abetment of any of the offences listed under IPC is punishable under Chapter V of the Code.

Sections 34, 35, 37, 120A and 120B in the IPC deal with criminal conspiracy and can also be applied.

CBI makes good use of law...

In September 2005 a 15-member Bhangra troupe, Mehak Punjab Di, was sent by ICCR through its Tagore Centre in Berlin to perform in Germany. Within hours of landing in Germany, nine members of the troupe, including the group leader, "disappeared".

Later, six of the missing artistes were traced. Investigations by the CBI so far suggest that the 'artistes' who disappeared in Germany paid up to Rs 6 lakh each. The money was allegedly shared by the alleged human traffickers.

The CBI FIR charges one Mr. Rakesh Kumar, a senior MEA official and ex-DG, ICCR along with Kehkeshan Tyagi (Kumar's colleague at ICCR) for entering into a criminal conspiracy with Har Gulab Singh and Shiv Kumar Sharma (who empanelled the troupe with ICCR in clear violations of established procedures) to facilitate illegal trafficking of nine individuals to Berlin.

Rakesh Kumar, Kehkeshan Tyagi, Har Gulab Singh and Shiv Kumar Sharma have been booked under Sections 120-B (criminal conspiracy), 420 (cheating), 403 (dishonest misappropriation), 467 (forgery of valuable security), 468 (forgery for purpose of cheating), 471 (using as genuine a forged document) of Indian Penal Code and 13(i)(d) of Prevention of Corruption Act.

There are some sections in the IPC that apply to cases of certain specific forms or purposes of child trafficking. These are included later under the legal framework described for each of those forms in detail.

The Criminal Procedure Code, 1973

Remember

The provisions relating to bail as contained in the CrPC do not apply in case of children. In all bail matters relating to children the provisions of the Juvenile Justice legislation will be applicable.

The Criminal Procedure Code (CrPC) lays down the procedure under which a criminal case is registered. It specifically deals with: -

- 0 The process and procedure for information to the police;

- 0 Investigation and interrogation of both the accused and the victim;
- 0 Arrest of persons and production before the court;
- 0 Framing of charges, release on bail, taking and recording of evidence;
- 0 Powers and jurisdiction of police;
- 0 Powers and jurisdiction of courts; and
- 0 Procedure for trials.

The Indian Evidence Act, 1872

The Indian Evidence Act, 1872 contains the process and procedure for establishment of relevant facts, establishes various forms of legal evidence, defines and specifies the burden of proof and provides for examination of witnesses during trial.

Juvenile Justice (Care and Protection of Children) Act, 2000

The Juvenile Justice (Care and Protection of Children) Act, 2000 (JJA) is a special legislation for children and defines a 'child' as a person up to 18 years of age. It deals with two categories of children – those in need of care and protection and those in conflict with law.

Trafficked children are treated as children in need of care and protection under the JJA.

The Act recognises certain offences against children as special offences. These clearly address trafficking of children in general as well as for begging and labour. These include:

- 0 Cruelty against a child by a person having charge of such child, including assault, abandonment, exposure, wilful neglect or procurement of a child for any of these acts, in a manner that is likely to cause mental or physical suffering to the child (Section 23);
- 0 Employing, using or causing a child to beg (Section 24 (1));
- 0 Abetment of the employment or

Inherent Contradiction

Unfortunately however, under the ITPA, girls who are caught for soliciting become offenders. If they are minors, under the JJA, they become children in conflict with law. In such cases the girls will, and have to, go through the legal process of trial including bail, evidence, cross-examination etc. in the Juvenile Justice Boards set up under the JJA specifically to deal with children who commit crimes.

This is an inherent contradiction within the JJA that can only be rectified if the ITPA is amended to treat all girls into prostitution as victims rather than offenders, even if they are found soliciting.

use of a child for begging by a person having charge of such child (Section 24 (2));

- 0 Procuring a child for hazardous employment, keeping such child in bondage and withholding the child's earnings for one's own use (Section 26).

The juvenile justice law provides both institutional and non-institutional measures of rehabilitation of trafficked children, including placement in foster care, adoption and sponsorship.

The Legal Services Authorities Act, 1987

Legal aid is one of the biggest hurdles in ensuring justice to the victims. The Legal Services Authorities Act, 1987 lays down the entitlements to legal services. Section 12 of the Act provides the criteria for giving legal services.

State Laws

Goa is the only state that has framed a law to deal with offences against children, including child trafficking. The **Goa Children's Act, 2003** not only defines 'child trafficking' but also provides punishment for abuse and assault of children through child trafficking for different purposes such as labour, sale of body parts/organs, adoption, sexual offences of paedophilia, child prostitution, child pornography and child sex tourism. Airport authorities, border police, railway police, traffic police, hotel owners, have all been made responsible under the law for protection of children and for reporting offences against children.



Law and its use for different forms of trafficking

In the absence of a holistic law on trafficking, we have to depend on the existing legal provisions that have to be often combined together to address the problem effectively. If a case of child trafficking comes to your notice and you decide to inform the police, ensure that the existing legal provisions are creatively and effectively used to book the trafficker(s) and bring justice to the child.

This is only possible if you know the law yourself.

Knowing the law – What, When and How can it be applied

Trafficking for Prostitution

The Immoral Traffic (Prevention) Act, 1956 (IPTA)

IPTA declares trafficking of minors for prostitution illegal and provides enhanced penalties for offences involving children and minors.

Under this law, 'prostitution' means the sexual exploitation or abuse of persons for commercial purposes, and it is this exploitation that is punishable. IPTA treats the following as offences:

- (i) running or managing of a brothel or the allowing of premises to be used as a brothel,
- (ii) living on the earnings of the prostitution of others,
- (iii) procuring, inducing or taking of a person for the purpose of prostitution,
- (iv) detaining a person in a brothel, and
- (v) seducing or soliciting for the purpose of prostitution.

Besides contemplating specialised machinery for its enforcement, the Act envisages a comprehensive scheme for rescue, protection and corrective treatment of prostitutes. Section 21 deals with establishment of protective homes by state governments.

Relevant provisions under IPC

- 0 Exposure and abandonment of child under twelve years, by parent or person having care of it (Section 317);
- 0 Outraging the modesty of a woman (Section 354);
- 0 Kidnapping/abduction of a woman for illicit intercourse and use of criminal intimidation or any other method of compulsion (Section 366);
- 0 Procurement of minor girls for illicit intercourse (Section 366 A);





- 0 Importation of girls to force them into illicit intercourse (Section 366 B);
- 0 Kidnapping / abduction to subject a person to unnatural lust of another person (Section 367);
- 0 Selling minor girls for the purpose of prostitution (Section 372);
- 0 Buying minor girls for the purpose of prostitution (Section 373);
- 0 'Rape' (Section 375) and 'unnatural offences' (Section 377). Sexual intercourse with a woman with or without her consent when she is under 16 years of age amounts to rape and the offender is punishable up to imprisonment for life;
- 0 Word, gesture or act intended to insult the modesty of a woman (Section 509).

The Andhra Pradesh Devadasis (Prohibition of Dedication) Act, 1988 and the Karnataka Devadasi (Prohibition of Dedication) Act, 1982

Over the years, religious practices like the devadasi tradition and the jogin or matamma practices, whereby young girls are dedicated to gods and goddesses, have come to be misused by temple priests and influential people in their villages for forcing them into prostitution or trafficking them for prostitution. In the states of Andhra Pradesh and Karnataka, legislations like the Andhra Pradesh Devadasis (Prohibition of Dedication) Act, 1988 and the Karnataka Devadasi (Prohibition of Dedication) Act, 1982 were brought into force to put an end to such religious, social and customary prostitution rampant in these states.

These legislations ban customary dedication of girls to gods and goddesses and stipulate punishment for those who perform, promote, abet, and take part in the dedication ceremony.

Both these laws do not contain any provisions specific to trafficking and prostitution as such. However, while making out a legal case they must be applied in order to ensure that all persons responsible for “dedicating” young girls and hence abetting the crime of trafficking can be brought to book.

Some landmark judgements of the Supreme Court of India (e.g. Vishaljeet v. Union of India 1990 and Gaurav Jain v. Union of India 1997) have influenced government policies, programmes and schemes, as well as law enforcement with respect to trafficking in women and children and their commercial sexual exploitation.

Significant among the rulings and directions are:

- 0 Evaluation of Government measures and their implementation
- 0 Speedy legal action against traffickers and middlemen
- 0 Rehabilitation of victims of cultural practices
- 0 Constitution of a Committee for in-depth study of the problem of prostitution, child prostitution and children of prostitutes for their rescue and rehabilitation
- 0 Streamlining arrangements for proper determination of the age of victims to ensure prosecution of offenders
- 0 Proper implementation of the Juvenile Justice Act
- 0 Involvement of the National Commission for Women in monitoring implementation of anti-trafficking measures

Trafficking for Labour

India has a plethora of legislations to address the child labour issue. But the real problem today is trafficking and that is not dealt with by the existing labour legislations.

Laws that come closest to dealing with a situation of trafficking of children for labour are as follows:

Relevant provisions under IPC

- 0 Buying or disposing off any person as a slave (Section 370);
- 0 Habitual dealing in slaves (Section 371);
- 0 Unlawful compulsory labour (Section 374).

Relevant provisions under the Juvenile Justice Act of 2000

Section 26 of the JJA penalises procurement of a child for the purpose of any hazardous employment, keeping such child in bondage and withholding the child's earnings for one's own use.

Although not drafted to specifically deal with trafficking of children for labour, there are some special legislations that should be applied whenever possible, at least to address economic exploitation of children or the child labour aspect inherent in it. These are:

It has been found that parents are often innocent and are duped by the traffickers to send their children away for labour. Little do they know that the traffickers may be pledging the labour of their children for their own benefits. Today's placement agencies for instance are the best example of those who pledge the labour of a child. The law does not deal with such agencies, middlemen and touts.



Children (Pledging of Labour) Act, 1933 declares any agreement by a parent or guardian to pledge the labour of a child below 15 years of age for payment or benefit other than reasonable wages, to be illegal and void. It also provides punishment for such parent or guardian as well as those who employ a child whose labour is pledged.

The Bonded Labour System (Abolition) Act, 1976 prohibits forcing a person into bonded labour for debt repayment. The act extinguishes all debt agreements and obligations. It prohibits creation of any new bondage agreement and discharges bonded labourers from all debts for which they were bonded. Compelling a person to render bonded labour is punishable under the law. This includes punishment for parents who pledge their child or other family members to work as a bonded labourer.

Child Labour (Prohibition and Regulation) Act, 1986

Prohibits employment of children below 14 years in certain hazardous processes and regulates it in certain other non-hazardous processes.

A list of other labour laws that prohibit child labour and/or regulate working conditions for child labourers and can be used to book the employers is as follows:

- 0 The Factories Act, 1948
- 0 The Plantation Labour Act, 1951
- 0 The Mines Act, 1952
- 0 The Merchant Shipping Act, 1958
- 0 The Apprentices Act, 1961
- 0 The Motor Transport Workers Act, 1961

- 0 The Beedi and Cigar Workers (Conditions of Employment) Act, 1966
- 0 The W.B. Shops & Establishment Act, 1963

Trafficking for Begging

Children are trafficked within the country and also across borders for begging. The following legal provisions can be used to punish those who traffic children or use them for purposes of begging:

Relevant provisions in the IPC

Kidnapping or maiming a minor for begging (Section 363A).

Relevant provisions under the Juvenile Justice Act of 2000

Employment of or using a juvenile or child for begging (Section 24).

'Begging' is a subject in the Concurrent and the State lists in the Seventh Schedule to the Constitution of India. Accordingly, 'anti-beggary' laws have been put in place in 16 States and 2 Union Territories. The term 'anti-beggary' clearly suggests that these laws are about prohibiting begging, declaring it as an offence and treating all beggars as criminals. They do not contain any provisions to deal with trafficking of children for begging and the inherent exploitation.

Trafficking for Sports and Entertainment

Trafficking of children for sports and entertainment such as circus and camel races is not unheard of. In both these situations children are slaves of their owners. They have virtually no freedom of movement and are subjected to various forms of torture and exploitation, economic, physical and mental.

IPC and trafficking of children for circus or camel jockeying

The IPC is the only law that contains some provisions to deal with trafficking of children for circus or camel races.

Both these situations relate to cross-border trafficking as most children in the circus industry in India are trafficked from Nepal and as regards camel races, children from various parts of the country are trafficked to the Middle East to work as camel jockeys. Therefore, the

relevant provisions in the IPC are:

- 0 Kidnapping/abduction for slavery or to subject a person to grievous injury such as in camel racing (Section 367);
- 0 Import / export / removal / buying / selling / disposing / accepting / receiving / detaining a person as a slave (Section 370);
- 0 Habitual dealing in slaves (Section 371).

Trafficking for and through Marriage

As we have already seen trafficking for and through marriage has emerged as one of the biggest purposes for buying and selling of young girls. Prevention of child marriages is one of the most effective ways of dealing with this problem.

The Child Marriage Restraint Act, 1929 restrains the solemnisation of child marriages by laying down the minimum age of marriage for both boys and girls.

Relevant provisions under IPC

- 0 Kidnapping, abducting or inducing a woman to compel her into marriage (Section 366);
- 0 Fraudulent marriage (Section 496).



Trafficking for and through Adoption

Adoption rackets have been in the news for some time now. The issue of illegal adoptions, particularly inter-country adoption has been a serious concern in Parliament as well.

Apart from the section dealing with kidnapping and abduction in the IPC, there is no law that addresses offences related to illegal adoptions or buying and selling of children for adoption. In such a situation it is important to ensure that the Supreme Court's guidelines for adoption are followed.

Central Adoption Resource Agency (CARA)

is the autonomous body concerned with regulating adoption matters. They provide the framework within which adoption has to be carried out within and outside the country and also are the authority on recognising and licensing agencies working on adoption.

While CARA is responsible for enlisting foreign agencies for the purpose of inter-country adoptions, the State Governments are required to maintain a list of children's homes and adoption agencies working in the state.

In *Lakshmi Kant Pandey V Union of India* (1984 2 SCC 244 and 2838 of 1991 in Writ Petition (criminal) No. 1171 of 1986) the Supreme Court took cognizance of illegal inter-country adoptions and ordered that in the absence of any laws on adoption, the foreign parent could take an Indian child in adoption by applying to the court under whose jurisdiction the child ordinarily resided, become the child's guardian under the Guardians and Wards Act, 1890 and then legally adopt the child as per the national laws of that country. Subsequently the CARA guidelines were framed.

Scrutinising Agencies are appointed by the Supreme Court to facilitate the process of applications and other documents for adoption as well as ensure that adoption agencies are recognised and children are legally free for adoption.

Voluntary Coordinating Agencies (VCAs) are established primarily to promote in-country adoptions. As per the Supreme Court's directives, in case of inter-country adoptions, a clearance certificate is required by the scrutinising agencies from the VCAs.

Trafficking for Illegal Activities such as Drug Smuggling

Children are known to be lured or coerced into smuggling narcotic drugs. They are used as couriers. Although the law does not cover the act of trafficking of children for this purpose specifically, the following provisions may be invoked:

I. The Narcotic Drugs and Psychotropic Substances Act, 1985

This law declares illegal the production, possession, transportation, purchase and sale of any narcotic drug or psychotropic substance and makes the person, addict/trafficker liable for punishment.

Use or threat of use of violence or arms by the offender, use of minors for the commission of offence, commission of the offence in an educational institution or social service facility are some of the grounds for higher punishment.

2. The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988

Under this law, people who use children for drug trafficking can be booked as abettors or conspirators to the act.

The sections on kidnapping and abduction in the IPC can always be used to book a case where children have been enticed or kidnapped to consume, sell or smuggle drugs.

Trafficking for Sexual Purposes such as Pornography

Enticing and using children for production of pornographic materials is becoming increasingly common. The Internet has made children victims to the aggression of paedophiles and cyber criminals. Paedophiles use their false identity to trap children and contact them in various chat rooms where they befriend them and gain personal information. They start contacting children on their e-mail addresses and drag children into the net for the purpose of sexual assault or to use them as a sex object.

The following laws can be used to address this issue:

- 0 **Young Persons Harmful Publications Act, 1956** prevents the dissemination of certain publications that are harmful to young persons.
- 0 **The Information Technology Act, 2000** amongst other things stipulates that publishing, or transmitting, or causing to be published, pornographic material in electronic form shall be punishable (Section 67).
- 0 **Relevant provisions under IPC**
Offences relating to sale, etc., of obscene objects to young persons (Section 293).

Trafficking for Organ Transplant or Organ Trade

Sale of human organs is a fast growing “trade” and children are easy victims.

The Transplantation of Human Organs Act, 1994 makes removal of human organs without authority and commercial dealing in human organs criminally liable.

Besides all the laws mentioned above, some Supreme Court rulings have become a judicial precedent and need to be followed.

International Standards on Child Trafficking



Why is International Law Important?

International laws lay down standards that have been agreed upon by all countries. By ratifying an international law or convention or a covenant, a country agrees to implement the same. To ensure compatibility and implementation, the standards set forth in these international conventions are to be reflected in domestic law. Implementing procedures are to be put in place as needed, and the treaties must be properly enforced.

International Human Rights Law consists of:

0 ***Treaties – Covenants, Conventions, Charters, Protocols, Accords and Agreements***

A Treaty is legally binding on those States, which have consented to be bound by the provisions, and is thus Party to the treaty. A State becomes a Party to the treaty by ratification, accession or succession.

0 ***Customary International Law***

Customary international law, also known as Custom, is the term used to describe a general and consistent practice followed by States deriving from a sense of legal obligations.

0 ***Declarations and Resolutions***

Declarations, Proclamations, Standard Rules, Guidelines, Recommendations and Principles do not have binding legal effect on the States. Nevertheless, these instruments have an undeniable moral force, and provide practical guidance to States in their conduct. The value of such instruments rests on their recognition and acceptance by large number of States, and even without binding effect, they are important as they are broadly accepted principles within the international community and useful for standard setting.

Adoption of International Law

Signature by Government:

This is the first step towards acceptance of any international instrument. By doing so the Government has agreed to the contents of the international law (Covenant/ Convention or Optional Protocol to the Convention). However, the country has not agreed to make it part of its national law and therefore it cannot be treated as such. The country can only sign a treaty in the period that it is open for signature.



Ratification by Government:

Only a State that has signed the instrument can ratify it. Ratification consists of two procedural acts. At the domestic level, it requires approval by the appropriate constitutional organ (usually the head of State or Parliament). At the international level, it entails regular reporting to the relevant UN Body created for it (e.g. States need to report to the UN Committee on the Rights of the Child on its implementation of the Convention on the Rights of the Child). By ratifying an international law (Covenant/ Convention or Optional Protocol to the Convention), the Government has agreed to make it a part of its national law and therefore it can be treated as such. Violation of a ratified instrument can be raised in any court of the country and also used to file cases.

Accession by Government:

Entails the consent to be bound by a State that has not previously signed the instrument. States ratify treaties, both, before as well as after the treaty has entered into force. The same applies to accession.

Succession:

A State may also become party to a treaty by succession, which takes place by virtue of a specific treaty provision or declaration.



The following are the most important international conventions and related treaties regarding trafficking of children:

I. The Convention on the Rights of the Child, 1989

The most widely ratified human rights instrument, the Convention on the Rights of the Child, specifically mandates States to protect children from trafficking.

- 0 Article 11(I):** States Parties shall take measures to combat the illicit transfer and non-return of children abroad.
- 0 Articles 34:** States Parties undertake to protect the child from all forms of sexual exploitation and abuse.
- 0 Article 35:** States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

2. The Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, 2000

The United Nations General Assembly adopted this protocol in May 2000, and it came into force on 18 January 2002. It applies to the sale of children for purposes of sexual exploitation, child labour or adoption, and covers prevention, prohibition and assistance to victims. Whereas the Convention on the Rights of the Child primarily emphasises the prevention of sexual exploitation, the Protocol highlights the criminalisation of child prostitution and pornography in the wake of widespread and continuing practice of sex tourism.

0 Article 3(1): Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organised basis:

(a) In the context of sale of children as defined in Article 2:

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

Sexual exploitation of the child;

Transfer of organs of the child for profit;

Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in Article 2⁶ ;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in Article 2.

3. The Convention on the Elimination of All Forms of Discrimination against Women, (CEDAW), 1979

CEDAW defines discrimination against women and sets up an agenda for national action to end such discrimination. Countries that have ratified this convention are legally bound to take appropriate measures against all forms of trafficking in women and exploitation of women.

⁶ Article 2: For the purposes of the present Protocol: (a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration; (b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration; (c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

For the purposes of this convention, a woman includes the girl child. However, its articles on trafficking and exploitation are relevant only to the commercial sexual exploitation of children.

4. The Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (Palermo Protocol on human trafficking) and the Protocol Against the Smuggling of Migrants by Land, Sea and Air supplementing the United Nations Convention on Transnational Organised Crime, 2000

The United Nations General Assembly adopted these protocols on 15 November 2000. India signed them on 12 December 2002. The 'Palermo Protocol on human trafficking' provides the first definition of trafficking in international law. The Protocol clearly recognises that there is no question of consent in the case of children who are trafficked. In addition to calling for comprehensive policies and programmes to prevent trafficking in persons, especially women and children, this Protocol contains detailed provisions on the obligations of legislatures to enact laws against trafficking, on law enforcement and on the treatment of victims. Measures include criminalisation of trafficking, appropriate penalties, protection of victims in receiving countries and information sharing between countries.

5. Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with special reference to Foster Placement and Adoption Nationally and Internationally, 3 December 1986. General Assembly Resolution 41/85 (Adopted in the 95th Plenary Meeting)

This declaration lays down principles for placement and adoption and, although not binding on States Parties, can be used to formulate national laws and policies.



6. The Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, 1993

This convention, which came into force in 1995, provides a legal framework to protect children, birth parents and adoptive parents involved in inter-country adoptions. To ensure that adoptions are in the best interests of the child, it requires countries to cooperate in the prevention of child abductions and trafficking, and for adoptions to adhere to basic standards.

7. SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002



The main criticism levied against the SAARC Convention is its narrow definition of trafficking, which is limited to prostitution. Also, it makes no distinction between women and children. Trafficking has been defined to include the moving, selling or buying of a person, but does not include recruitment, labour, transfer or receipt that does not essentially constitute buying or selling.

The aim of this convention is to promote cooperation amongst member states to effectively deal with various aspects of prevention, prohibition and suppression of trafficking in women and children; repatriation and rehabilitation of victims of trafficking and preventing the use of women and children in international prostitution networks, particularly where the SAARC member countries (Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka) are the countries of origin, transit and destination.

The convention is legally binding on its signatory parties and is the first regional anti-trafficking treaty to emerge from the Asian continent. As of March 2004, the convention has been ratified by all member countries except Nepal and Sri Lanka.

The SAARC Convention defines 'child', 'prostitution', 'trafficking', 'traffickers' and 'persons subjected to trafficking' under Article 1. It provides for 'aggravating circumstances', which are factual circumstances that enhance the gravity of the offence (Art. 4). It also provides for the protection of victims (Art. 5), mutual legal assistance (Art. 6), training and sensitisation of enforcement officials (Art. 8), rehabilitation of victims (Art. 9). Offences under the Convention are extraditable (Art. 7). Article 8(3) requires the States Parties to establish a Regional Task Force comprising officials from the Member States, to facilitate implementation of the provisions of this Convention and to undertake periodic reviews.

8. SAARC Convention on Regional Arrangement for the Promotion of Child Welfare, 2002

This Convention seeks to create regional arrangements among SAARC countries in order to promote understanding and awareness of the rights, duties and responsibilities of children and to develop the full potential of the South Asian child.

Status of Ratification of Relevant International and Regional Instruments by India

UN Convention on the Rights of the Child

RATIFIED on 11 December 1992

Optional Protocol to CRC on Sale of Children, Child Prostitution and Child Pornography

RATIFIED on 16 August 2005

Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children

SIGNED on 12 December 2002

CEDAW

RATIFIED on 9 July 1993 with a declaration/reservation

Hague Convention on Protection of Children and Co-operation in Respect of Inter-country Adoption, May 1993

RATIFIED on 1 October 2003

SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002 & SAARC Convention on Regional Arrangements for the Promotion of Child Welfare in South Asia

SIGNED on 5 January 2002 at the Eleventh SAARC Summit in Kathmandu on 4-6 January 2002
Also RATIFIED later (date not available)

WHY ARE CHILDREN TRAFFICKED ?



What Can Parliamentarians do?



Government and society need to show a strong commitment to combat trafficking. This is only possible when each member of government and society is sensitised to the gravity and extent of the problem and decides to act against it. It is important that government and society is aware of the situation and the implications for children if they are going to respond effectively to the problem. They then, must take every opportunity to warn people, in particular children, of the dangers of trafficking.

Child trafficking is complicated and shrouded in secrecy. It requires a multi-pronged approach and the involvement of multiple stakeholders, both, within the government and in society.

Overall Approach to Child Trafficking

To protect children from trafficking and other offences, the following areas must be addressed⁷:

1. Government's Commitment To Fulfilling Protection Rights

A protective environment requires government's interest in, recognition of and commitment to child protection. Adequate resources must be made available for child protection initiatives. These could include programmes to combat child labour or programmes for juvenile justice. Political leaders need to take the lead in bringing child protection on to the legislative agenda.

2. Legislation And Enforcement

Adequate legislation, consistent implementation and full accountability are essential elements of a protective environment.

3. Attitudes, Traditions And Practices

In societies where attitudes or traditions foster abuse, such as sex with minors, severe corporal punishment, harmful traditional practices or differences in the status and perceived value of boys and girls, the environment will fail to be protective. In societies where all forms of violence against children are taboo, and where the rights of children are broadly respected by custom and tradition, children are more likely to be protected.

⁷ Drawn from Handbook for Parliamentarians No. 9, 2005, Combating Child Trafficking, Inter-Parliamentary Union and UNICEF, pp. 23, www.unicef.org/protection/files/child_trafficking_handbook.pdf

4. Opening Discussion And Raising Awareness

At the most basic level, children need to be free to speak about child protection concerns that affect them or others. At the national level, both media attention and civil society engagement with this issue contribute to child protection. Partnerships at all levels are required for an effective, coordinated response.



5. Enhancing Capacity Of Communities And Families

Parents, health workers, teachers, police, social workers, and others who care for and work with children need the skills, knowledge, authority and motivation to identify and respond to child protection problems. Broader initiatives such as the provision of education and safe play areas, enhance the capacity for protective environments.

6. Children's Participation

If children are unaware of their right to be free from abuse, or are not warned of dangers such as trafficking, they are more vulnerable to exploitation. Children need to be equipped with the information and knowledge necessary to protect themselves. They also require safe channels for participation and self-expression. When children have few opportunities for participation, they are more likely to become involved in crime or other dangerous or harmful activities.

7. Monitoring And Reporting

A child protective environment requires a comprehensive monitoring system that records the incidence and nature of abuses and allows for informed, strategic responses. Such systems are more effective when they are participatory and locally based. Governments need to be aware of the situation of its children with regard to violence, abuse and exploitation.

8. Services For Recovery And Reintegration

Child victims of neglect, exploitation or abuse are entitled to care and non-discriminatory access to basic social services. These services are best provided in an environment that fosters health, self-respect and dignity of the child.

Role of Parliamentarians

- 0 As elected representatives of all citizens, Parliamentarians have an important role to play in ensuring the realisation of protection of all children through formulation of appropriate laws, monitoring their implementation, adopting budgets and raising awareness.
- 0 They have the capacity not only to influence the decisions and actions of government but also to connect with communities and constituencies to influence opinions and actions.

Interventions Parliamentarians can make

These are four key actions every Parliamentarian can be engaged in:

I. Ensure that the necessary legislation is in place to punish traffickers

- 0 Having identified the gaps in existing laws you can advocate for law change and the formulation of a comprehensive law on child trafficking.

NOTE: The choice in changes in laws is between a separate comprehensive law on child trafficking and amendments in the IPC to cover all forms of trafficking. Experience has shown that the police who are responsible for arrest of traffickers and rescue of trafficked children are most familiar with the IPC and it is the legal document they consult the most. What is also true is that to address the social welfare component of the problem of child trafficking, India already has a juvenile justice system that needs to be implemented effectively. It is therefore more practical and strategic to insert legal provisions in the IPC rather than go for a separate law.

- 0 Consult with persons across the country working on child trafficking, seek their input for your interventions in parliament during debates.

Specific legal changes that you can ask for

Definition of a child:

The Convention on the Rights of the Child, defines a child as “every human being below the age of 18 years, unless under the law applicable to the child, majority is attained earlier.” The Juvenile Justice (Care and Protection) Act, 2000 has the same definition



of the child. The age for entering into a legal contract is also 18 years and so is the age for getting a driving license. It is only at the age of 18 that we give our citizens a right to vote. However, there are many other laws that define a child differently.

Definition of trafficking:

India needs a comprehensive definition of trafficking to include all purposes and forms. The Palermo Protocol provides us with an example of such a definition to include sexual exploitation, forced labour, slavery, slavery-like practices and servitude. A comprehensive definition needs to include trafficking for other purposes too such as that for organ trading, drug peddling/smuggling, marriage and adoption. Any definition requires explicit understanding that child trafficking can occur without the consent of the child victim.

Definition of the crime of trafficking:

Laws need to establish a distinct criminal offence of trafficking in persons that encompasses all forms and potential victims of trafficking.

The following should be considered⁸ :

- 0 In keeping with the Palermo Protocol, there is no requirement for coercion, force, deception, abuse of power or a position of vulnerability in order for child trafficking to have occurred. Regardless of how a child is exploited the perpetrator must be punished.
- 0 Under no condition should laws criminalise children. Those who have been trafficked or sexually exploited must be treated as victims, not as offenders. The law needs to include specific provisions guaranteeing that children will not face criminal penalties as a result of their being trafficked into illegal industries such as prostitution. Victims are not to be subject to incarceration, detention or other punishment.
- 0 Transport of persons for trafficking takes place both within and across borders. Many children are trafficked within the country, especially from rural to urban areas. Others are brought in from other countries. India is a country that supplies children for the international market, receives children from other countries and is also a country of “transit”, because children are brought in here and sent further on to other countries. Tourism-related demands often push trafficking to urban and resort districts. Seasonal migration for agriculture promotes child labour. Sometimes children are farmed out to

⁸ Drawn from “Training Manual for Combating Trafficking in Women and Children” www.un.or.th/TraffickingProject/trafficking_manual.pdf

extended family members or friends and wind up as domestic workers. Both internal and international trafficking of children is pernicious and must be subject to criminal law.

Punishment

- 0** All activities related to trafficking, including instigating, aiding, abetting, attempting, omitting to act against and conspiring to traffic, must be made answerable under criminal law.
- 0** In addition, all perpetrators involved in trafficking must be prosecuted, including employers, facilitators, procurers, brothel owners, madams, pimps and 'customers'.
- 0** When people whom the child trusts the most become their exploiters, the legal system must ensure stringent action along with public shaming.
- 0** Public officials such as border officials, police, document producers, school teachers, humanitarian workers, village leaders and transport workers involved or complicit in trafficking must not be excluded. They must face both administrative discipline and criminal prosecution.
- 0** Organisations involved in trafficking, such as those in the entertainment or tourism industry or agencies that promote illicit adoptions, must be subject to criminal and civil liability and sanctions.
- 0** Offenders must be prosecuted under all applicable criminal laws, including those against slavery, slavery-like practices, sexual exploitation, illicit adoption, sex tourism, involuntary servitude, forced or compulsory labor, forced conscription into armed conflict, debt bondage, forced marriage, forced abortion, forced pregnancy, torture, cruel, inhuman or degrading treatment, rape and sexual assault, bodily injury, kidnapping, unlawful imprisonment, labour exploitation, withholding of identity papers and corruption.
- 0** Parliamentarians are urged to undertake a review of existing criminal laws to identify provisions that are relevant to trafficking in persons. They need to create sanctions for offences related to trafficking that reflect the seriousness of the crime. Punishment in the form of imprisonment, fines, confiscation of assets, closure of establishments, exclusion from public aid and tax benefits, probation and disqualification from practice of commercial activities should be carried out.
- 0** State's criminal law should include stringent penalties if the victim is under the age

of eighteen, reflecting this in appropriate mandatory minimum sentences. Those who exploit and pay for sex with children or indulge in sex with children in any form must face criminal sanctions regardless of whether they are aware of the child's age.

- 0 Aggravating circumstances that carry higher penalties should include trafficking that involves public officials or institutions, organised criminal groups, a person who is in a position of authority over children (such as school officials, persons charged with the task of protecting children or public welfare in general), conspiracy to traffic, and trafficking a spouse/partner, family member or guardian.

Labour Laws

Labour laws are relevant because traffickers often lure their victims with false promises of employment. Strong labour laws have the potential to discourage trafficking for child labour. For example, parliamentarians can prevent trafficking for child labour by strictly enforcing the adult minimum wage, which dissuades traffickers from preying upon children. You can lobby in Parliament to ensure that the child labour law bans all forms of child labour and the Bonded Labour Abolition Act is extended to cover all contemporary forms of slavery.



Adoption Laws

Adoption related trafficking can be included in general anti-trafficking legislation. It is important that adoption laws are strengthened to eliminate loopholes that facilitate trafficking in children for purposes of adoption. A strong follow-up mechanism to monitor all adoptions should be built into the law and strictly implemented.

Marriage Laws

To check trafficking for and through marriage it is important to ensure compulsory registration of marriages.

The Supreme Court has recently ruled that all marriages, irrespective of their religion, be compulsorily registered and directed the Centre and State governments to frame and notify rules for this within three months.

Dhananjay Mahapatra, 'Supreme Court makes marriage registration compulsory', Times News Network, February 14, 2006

Laws for protection and assistance

Laws that provide for protection and assistance for victims are essential to a comprehensive legislative framework on trafficking. Laws that criminalise trafficking are insufficient without clear measures to provide assistance to victims.

2. Improve law enforcement

Critical to better law enforcement is:-

- 0 Better understanding of the problem and knowledge of legal provisions.
- 0 Establishment of a 'special anti-trafficking unit' made up of such law enforcement agents as police, prosecutors, border patrols, immigration officials and judges for coordinating law enforcement operations related to trafficking. Such units should include women law enforcement officials, as well as social workers, mental health professionals and children's advocates.
- 0 Proper training to identify victims of trafficking, know and understand victims' rights and specific needs, and be familiar with procedures for referral to organisations and agencies that can provide appropriate services.
- 0 Development of standards and penalties that apply to law enforcement authorities who are implicated in corruption. At a minimum, we need an external review and investigation of law enforcement officials and institutions suspected of involvement in criminal activity.
- 0 Ensuring child protection is an integral part of all law enforcement activities. It is therefore important that anti-trafficking work takes a multi-sectoral approach and responds to criminal action and victim needs.

3. Monitor government activity

- 0 As Parliamentarians you can monitor the government's performance to ensure that it acts in a responsible and accountable manner for the overall good of society.
- 0 You can raise questions on all forms of trafficking and ask for government's response on their actions on child trafficking. This will not only keep the government more alert but also send a strong message to traffickers that they are being watched.

4. Ensure necessary resources are made available to law enforcement agencies to suitably equip them to fight trafficking

- 0 Through the budgetary process, parliaments are responsible for approving the national budget, thereby allocating resources to the government, and monitoring government spending.

Influence public opinion

- 0 As opinion leaders and representatives of the people, you can also play an important advocacy role, raising awareness on specific societal issues of concern in your constituencies as well as at national and international levels.

It is imperative in the best interest of the child, that our interventions follow the due process of law.

A knee-jerk response can cause the child harm. While rescue and rehabilitation of a child victim can be emotionally draining and sometimes even a frustrating process both for the rescuer as well as the child, legal procedures must be followed.

We must never keep the rescued child with ourselves without informing the police. Although undertaken in good faith, it can be seen as amounting to kidnapping by the rescuer and be treated as an illegal or unlawful action. This would subvert the process of rescue and rehabilitation of the child.

For the Right to Child Protection to be respected, abusive practices must lose their traditional protection⁹

Never employ a child because when you do so, you actually justify child labour and promote denial of every child's unequivocal right to development and protection.

Refrain from being part of rituals and ceremonies that promote gender bias, inequality, discrimination, violence and exploitation. Degrading, disrespectful, unequal and abusive treatment of any child can have no logic or reason.

Refrain from being part of mass marriages as they often involve young girls below 18 years of age, which again cannot be justified at any cost. Your presence at such marriages will only send wrong signals and may not even be appreciated by the girls at the end of the day.

NEVER FORGET THAT YOU ARE A LEADER AND CANNOT AFFORD TO PATRONISE PRACTICES DEROGATORY TO THE DIGNITY AND PERSONHOOD OF A CHILD

⁹ Karin Landgren. The Protective Environment: Development Support for Child Protection. Human Rights Quarterly, 27 (2005) 214-248.



HANDLE WITH CARE

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About CACT

CACT – Campaign Against Child Trafficking in India is part of the International Campaign against Child Trafficking (ICaCT), supported by the tdh Federation in Geneva and its other European chapters. The International campaign is functional in six regions namely South East Asia, India, South and West Africa, Europe and Latin America.

Formally launched in New Delhi on 12 December 2001, the CACT presently extends to 17 States – Andhra Pradesh, Bihar, Delhi, Goa, Gujarat, Himachal Pradesh, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Meghalaya, Orissa, Tamil Nadu, Uttaranchal, Uttar Pradesh and West Bengal.

CACT believes that all children have a right to survival, development, protection and participation. Trafficking of children is one of the worst violations of these rights.

The Campaign envisions a world where children are not seen as commodities to be bought and sold in the open market, a world where humanity is founded upon freedom, dignity and happiness of children and not upon their exploitation and abuse.

Our Mission is to **STOP CHILD TRAFFICKING!**

