

NOTES AND COMMENTS

CHILD FRIENDLY ANTI HUMAN TRAFFICKING POLICE

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Abstract

Human trafficking is a heinous crime against humanity. While dealing with cases of human trafficking, especially when special police officers handle child survivors, the state is required to be well equipped with special skills of investigation, special prosecutors and a special court for trial of cases. These special police officers form a team which is known as the 'Anti Human Trafficking Police Unit' (AHTU). They are required to be guided by the core child rights convention principles of child participation, non-discrimination, best interest and right to life. "Child friendly" implies physical space provided, language used, accessibility of AHTU, quality of intervention, legal aid, interpreter, respecting child's wishes, respecting child versus parental rights unless child's life is at risk. This paper attempts to discuss the role of AHTUs with special reference to State of West Bengal. The methods of investigation to be followed by AHTUs during pre-rescue process, post rescue process, finally suggestions and recommendations to strengthen the AHTUs that would accomplish the objective of protection, prevention, prosecution and conviction of traffickers. Role of AHTUs in reintegration of these survivor's in to the mainstream of the society.

I Introduction

THE SOCIO-ECONOMIC conditions prevalent in backward and marginalized communities lead to migration and trafficking in children. The children are lured under false assurance of good life and paid by the agents or middlemen or bought by them from their poor parents and brought to the employers in the city. These children are made to work in hazardous conditions along with unhygienic accommodations and lack of medical facilities. They are often abused physically, sexually and kept confined after work hours and not allowed to play or mix with any outsider. Moreover they are ill-fed and undernourished and work for long hours with meagre amount of money and sometimes without any money under debt bondage. Some are also used as domestic help, in dhabas, factory and manufacturing processes and commercial sexual exploitation *etc.*

West Bengal has a huge porous international border, around, 2,217 kilometres with Bangladesh, 92 kilometres with Nepal and 175 kilometres with Bhutan. Districts of Darjeeling, North Dinajpur, South Dinajpur, Cooch Behar and Malda in the North of the state share international borders with Bangladesh, Nepal and Bhutan and are distinctly identified as prone to trafficking areas and easy source for the procurement.

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The districts of North and South 24 Parganas are other vulnerable areas prone to trafficking on the southern side.

As per the Report of the United Nations Office on Drug and Crime (UNODC) titled 'Anti- Human Trafficking, 2013' a total of 19000 women and children were reported missing from the State of West Bengal in the year 2011 and out of the reported cases only 6000 could be traced.¹ The state accounted for 42% (850) of minor girls acquired by traffickers nationwide, the National Crime Records Bureau data revealed in 2014.² With the highest incidence of human trafficking in 2014 *i.e.*, 3576 cases, West Bengal was on the top of all the Indian states therefore the need was felt to have a child friendly AHTUs to protect, prevent, prosecute and punish the child traffickers.

II Responsibilities of anti human trafficking police units

“The AHTUs have a comprehensive mandate for attending to the three P’s, *i.e.*, Prevention, Prosecution and Protection: to prevent trafficking crimes, to prosecute all the offenders, conspirators and abettors and to ensure best care and attention to the survivors and ensure that they are not harmed further.”³ Hence the units have a very comprehensive role to play in dealing with human trafficking cases.

Scope and ambit

The AHTUs members has to shoulder wide range of activities some important responsibilities such as conducting rescue operations, providing a multi-disciplinary approach amongst all stake holders, cooperation within the police and other agencies, preventing ‘secondary victimization/re-victimization’ and approaching this issue with the ‘best interest of the child/victim/survivor’.

The AHTU’s is required to function not as a single unit but be an integrated task forces inclusive of NGO’s, trained and sensitized social workers and personnel connected to women and Child Development Ministry.

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- 1 Shiv Sahay Singh, “42% of victims of sex trafficking in Bengal are minors, says study”, *available at*: <https://www.thehindu.com/news/cities/kolkata/42-of-victims-of-sex-trafficking-in-bengal-are-minors-says-study/article30140782> (last visited on Nov. 25, 2020). See also, Krishnendu Bandyopadhyay and Rohit Khanna, *available at*: <http://timesofindia.indiatimes.com/india/Bengal-tops-UN-list-of-missing-kidswomen/article.show/21075876.cms>(last visited on Dec. 1, 2020).
 - 2 Himadri Ghosh, “West Bengal, Epicentre of India’s Boom In Sexual Slavery”, *available at*: <http://www.indiaspend.com/cover-story/west-bengal-epicentre-of-indias-boom-in-sexual-slavery-43863>> (last visited on Nov. 15, 2020).
 - 3 UNODC, ‘Synergy in Action- protocol on Structure and Function of the Integrated Anti Human Trafficking unit(IAHTU) in India’ (2007) 7, *available at*: https://www.unodc.org/documents/human-trafficking/India_Training_material/Protocol_on_AHTU.pdf (last visited on Oct. 30, 2020).

Role of law enforcement in addressing trafficking in persons

Law enforcement officials have very important roles to play while dealing with traffickers of women and children. Human trafficking is serious heinous crime and one requires special skills to handle the cases of human trafficking. Therefore, the role of law enforcement agencies need to address in the following manner: finding potential victims of trafficking, informing them of their rights, prosecuting those involved in organised crime, identifying NGOs for victims and taking care of their medical and psychological needs, working closely with immigration and border services, social services and child welfare services.

III Legislative framework on human trafficking

The Indian Government ratified the United Nations Convention against Transnational Organized Crime (UNTOC) and its three protocols supplementing the convention, which includes the protocol to prevent, suppress and punish trafficking in persons especially women and children. This was received as a commendable step towards tackling the crime. The proposals for the amendment of Immoral Traffic Prevention Act, 1956 (ITPA) are being seriously considered by the Indian Government. The Protection of Children from Sexual Offences Act, 2012 was notified by the Ministry of Women and Child as a way forward legislation to protect children from sexual abuse and exploitation.

Certain types of sexual offences are currently covered under different sections of Indian Penal Code, 1860 (IPC). The provisions in the Code, however, do not distinguish between adult and child victims in terms of sexual offences. The Union Cabinet has in August 2012 recommended the amendment of the Child Labour (Prohibition and Regulation) Act 1986 to bring it in conformity with the Right to Education as mandated in article 21-A of the Constitution of India. The Juvenile Justice (Care and Protection) Act 2015 (JJ Act, 2015) has brought about further change and almost all states have adopted the Model Rules 2007 in their state rules. The application and enforcement of the Emigration Act, 1983 to regulate the recruitment agencies has been strengthened. The Code of Criminal Procedure (Cr PC) in 2009 was amended to include section 357-A. This section is related to victim compensation and also included victims of human trafficking and those of grave sexual offences and serious heinous crime.

IV What is human trafficking

Historically, trafficking has been defined as the trade in women and children for prostitution or other immoral purposes.⁴ Article 3, paragraph (a) of the Protocol to

4 Annual Report "Crimes against persons", *Europol* 2005 at 9.

Prevent, Suppress and Punish Trafficking in Persons defines, Trafficking in Persons as the:⁵

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 fraudulent, 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.

An increasing trend in migration and trafficking for labour was reported in the year 2013 by the UNODC. Due to compelling socio-economic conditions, a cohort of children migrated from economically backward areas to big cities for work. Middle men, agents facilitated the trafficking by luring the children or often their parents of glorious job prospects in the bigger cities and even extended meagre advances for the same. These agents were quite persistent in their efforts and over time assure the parents of lucrative avenues for their young children.⁶

Other relations

Indirectly, other than IPC, there are a bundle of laws such as Bonded Labour System (Abolition) Act, 1976, Child labour (Prohibition and Regulation) Act, 1986; Juvenile Justice Act, 2015, Goa Children Act, 2002, Prohibition of Child Marriage Act, 2006 and Protection of Children from Sexual offences (POCSO) Act, 2012, that deal with problems of trafficking.

Under the Criminal Law (Amendment) Act 2013, section 370 and 370 (A) of IPC, look into human trafficking including trafficking of children for exploitation in any form including physical exploitation or any form of sexual exploitation, slavery, servitude or the forced removal of organs. India has ratified the South Asian Association for Regional Cooperation Convention on Preventing and Combating Trafficking in Women and Children for Prostitution, 2002. A web portal, *stop human trafficking-mba.nic.in*,

5 UN General Assembly, "Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against Transnational Organized Crime" (2009), *available at*: https://www.unodc.org/documents/treaties/Special/2000_Protocol_to_Prevent_2C_Suppress_and_Punish_Trafficking_in_Persons.pdf (last visited on Oct. 27, 2020).

6 UNODC, "Current Status of Victim Service Providers and Criminal Justice Actors in India on Anti Human Trafficking" (2013), *available at*: https://www.unodc.org/documents/southasia/reports/Human_Trafficking-10-05-13.pdf (last visited on Nov. 20, 2020).

was launched in February 20, 2014, which will make it easier to share information among all stakeholders and effectively combat trafficking.

The Ujjwala Scheme actively works on various fronts for instance of preventing trafficking, rehabilitation of the victims, reintegration of the victims, the rescue processes as well as repatriation. The Integrated Child Protection Schemes (ICPS) provides for open shelters, sponsorship, foster care, adoption along with institutional care and after care, which are necessary in the whole process of restoring rehabilitating trafficked persons.

V Judicial interventions

National Legal Services Authority and the state legal services authority were nominated by the Supreme Court to regularly conduct training and sensitization programmes for all juvenile police units across the country. In *Sampurna Bebrua v. Union of India*,⁷ the court was monitoring the implementation of the Juvenile Justice (Care and Protection) of Children Act 2000. In *Re Exploitation of Children*⁸ the Supreme Court has recommended appointment of the National Commission for Protection of Child Rights (NCPCR) to monitor the implementation of the Juvenile Justice (Care and Protection) of Children Act 2000. The NCPCR was set up in March 2007 under the Commissions for Protection of Child Rights (CPCR) Act, 2005, with a mandate is to ensure that all laws, policies, programmes, and administrative mechanisms are in consonance with the Constitution of India and the UN Convention on the Rights of the Child. In *Re. Exploitation of Children in Orphanages in the State of Tamil Nadu v. Union of India*,⁹ Supreme Court exhorted the state for that in spite of their emphatic directions given on January 3, 2013 directing all the states and the union territories to implement the protective provisions contained in the Protection of Rights of Children from Sexual Offences Act, 2012, the Right of Children to Free and Compulsory Education Act, 2009 and the Commission for Protection of Child Rights Act, 2005, the same has not been implemented. The Supreme Court in the case of *Bachpan Bachao Andolan v. Union of India*¹⁰ has laid down detailed guidelines for combating human trafficking in India. The petition sought appropriate guidelines for persons engaged in circuses; conducting raids on circuses; appointment of special forces on the borders both national and international to prevent cross border trafficking of children, bondage, forcible confinement, sexual harassment and abuse of children while empowering them as per the powers of the child welfare committee under the Juvenile Justice (Care and Protection of Children) Act, 2000 to award compensation to child victims rescued

7 See, Writ Petition Civil No. 473 of 2005; MANU/SCOR/18098/2020.

8 Writ Petition Criminal No. 105 of 2008

9 See, Writ Petition Criminal 102 of 2007; 2020(1) RCR(Cri.)1022.

10 (2011) 5 SCC 1.

from the circuses; and to prohibit the employment/engagement of children under 18 in circuses.

The Supreme Court in the matter of *Buddhadev Karmakar v. State of West Bengal*¹¹ had constituted a panel to examine the issue of rehabilitation of sex workers and trafficked victims. The committee has been holding various meetings and consultations with various state governments to suggest solutions for strengthening of the rehabilitation mechanism. The Supreme Court in 2012 has issued notice to all states on the issue of missing children. The High Courts of Delhi, Punjab and Haryana have passed detailed orders to register First Information Report (FIR) in cases of missing children.¹²

Efforts made by West Bengal government

In the State of West Bengal, a Missing Children Tracking Portal (MCTP) was made operational at the Missing Persons Bureau (MCB), in Crime Investigation Department (CID), West Bengal.¹³ This portal receives information as soon as a general diary is entered in any police station and a Form-M is filled with all the necessary details along with the photo of the missing person. Once uploaded the details and the image is duly shared through the portal with the district crime record bureau for the records of the activity.

The Police Order No. 5/2014¹⁴ further laid down that there will be a Protection of Women and Children Cell (POWC) in headquarters of every district/ commissionerate headed by one inspector and two sub- inspectors. One of the sub-inspector will be a lady and the team will comprise of two assistant sub- inspectors and two constables. The order specified that the cell will as the district's anti-human trafficking unit and will mandatorily take over cases wherein the child is missing over four months.¹⁵ The inspector appointed under the AHTU will be head of POWC.

Track child portal has been designed and developed and in use from 2011-2012, adhering to the guidelines provided in the Juvenile Justice (Care and Protection of Children) Act, 2000 and Model Rules 2007 and the provisions laid down in the ICPS facilitate data entry and matching of missing and found children and also enable follow up of the progress of children who are beneficiaries of the scheme.¹⁶

11 2011 (8) SCALE 155

12 Available at: www.trackthemissingchild.gov.in (last visited on Nov. 29, 2020).

13 Police Order No. 9/2010, available at: http://trackthemissingchild.gov.in/trackchild/readwrite/publications/police_order_no.9-10-MBP.pdf (last visited on Nov. 20, 2020).

14 Available at: http://trackthemissingchild.gov.in/trackchild/readwrite/publications/Police%20Ord_32_0200201Police_Order_05_2014.pdf(last visited on Oct. 19, 2020).

15 See, *Bachpan Bachao Andolan*, WP(C) No 75/2012.

16 Available at: http://nceg.gov.in/sites/nceg.gov.in/files/nceg2016/casestudies/Track-Child_CaseStudy.pdf(last visited on Nov. 20, 2020).

While the investigating officer (IO) investigating the trafficking crimes adopt different methods taking into consideration the individual case of trafficking. It can be done by the following methods such as reactive investigation, proactive investigation and disruptive investigation, they are as follows:

Reactive investigation

This is based upon information received or a sudden event happening and does not include planning. It is an overt action inclusive of obtaining testimony and statements from witnesses (victims); detaining and/or arresting of suspects followed by interviews, visits, raids on suspected premises or locations to recover evidence and analysis of materials recovered from suspects and the premises occupied by them or thereby.

Proactive investigation

This is a planned investigative police action based on intelligence gathered and is deemed as best practice. It involves intelligence gathering, preplanning, surveillance, undercover activities to see the traffickers' movements, collaborative help from other agencies and evidence is not solely dependent on the victim who may later not give the same evidence

Disruptive investigation

This kind of investigation aims at interrupting criminal activities without arresting or prosecuting the criminals. Intelligence gathering is also required at times. This method is used when both the above methods are not feasible.

Dealing with trafficked persons is a sensitive issue and police being the first to come in contact with the victim/ survivor, need to follow the human rights, child rights, gender sensitive and victim friendly approaches that suit the occasion at that particular time:

Investigation of cases of trafficking

The purpose of the investigative process is that the survivor identifies the traffickers and other exploiters, evidences collected against them are properly documented and further steps taken as per the law.¹⁷ Trafficking being a continuous crime, it is very important to collect all the material objects, which will link, and lead to all the stages of this organised crime. The evidence should be collected from the scene of crime during rescue or immediately after under the *Panchnama*, otherwise there is a danger of evidence being destroyed or concealed by the exploiter.¹⁸

17 United Nations office on Drugs and Crimes, 'Manual for training Police on Anti Human Trafficking' (2008), *available at*: http://www.unodc.org/pdf/india/training_manual_police1.pdf (last visited on Nov. 20, 2020).

18 United Nations office on Drugs and Crimes, 'Standard Operating Procedures on Investigation of Crimes of Trafficking for Forced Labour' (2008), *available at*: https://www.unodc.org/documents/human-trafficking/India_Training_material/SOP_-_Investigation_-_Forced_Labour.pdf>; See also, *available at* : <http://uphome.gov.in/writereaddata/Portal/Images/SOP.pdf>(last visited on Nov. 20, 2020).

Firstly, ledgers, diaries, notebooks, account books, registers or work orders and materials that are manufactured, from the place of work, will help to investigate and prove in the first instance, the existence of the workplace, name of the victims and their number at present and in future, details of payment, many times it payment is given to the trafficker as debt bondage, so their names can be investigated. Whether children are in hazardous work, their age, lack of medical facility if no health register is maintained.

Secondly, if any vehicle of transportation is available, then its search it is imperative. Travel documents like bus or train tickets, name or visiting cards of any travel agents- this will prove the movement of the trafficked person, transit points as well offenders can be linked.

Thirdly, any kinds of receipts, agreements, house tax or rent, water or electricity bills etc. these can also prove the existence of the workplace and identify the owners who are culpable in trafficking.

Fourthly, photos, albums, pornographic videos relating to children, computer hard disks, compact disc's (CD), pen drives, media advertisements- this will help in proving sexual abuse and existence of such organised crimes.

After the investigating agency has collected material evidence, the same has to be scrutinized and analysed with the FIR and then has to be presented before the magistrate as per rules. The idea is to connect the crime to the criminals.

Pre rescue procedure to be followed

The starting point of investigating cases of human trafficking is identification of the trafficked and the trafficker with efficient and clandestine information gathering. Correctly identifying victims of human trafficking is essential for their protection and the protection of their rights.¹⁹ Due to the covert activities of the traffickers and the alienation of the victims by hiding them from the society using threat and coercion, identification of both the trafficked and the trafficker can be a daunting task for the police. With appropriate training they will be able to spot them. For identification certain observations/indicators are given as under:

Indicator of child survivor

To identify trafficked children, the investigating agencies have to look for one or many signs such as no access to their parents or guardian, has no friends of their own age outside of work, no access to education or time for playing, eats apart from other members of the "family" and are malnourished as they eat leftovers or travels only under strict supervision *etc.*

19 Dandurand *et al.*, *Human Trafficking: Reference guide for Canadian Law Enforcement*. (UCFV, RCMP, UNODC, ICCLR May, 2005), available at: http://www.icclr.law.ubc.ca/Publications/Reports/HT_Canadian_Law_Enforcement_Guide.pdf(last visited on Nov. 20, 2020).

Indicators of sexual exploitation

While identifying trafficked survivors of sexual exploitation, the investigating agencies have to look for one or many signs of indicators such as young girls under age of 30 years, poorly dressed, not conversant with local language and can only speak sex related words in the local language, prohibition on socialization, ownership tattoos, no identification document or evidence of unprotected and violent sex perpetrated on the alleged victim.

Indicators of labour exploitation

While identify trafficked survivor of sexual exploitation, the investigating agencies have to look for one or many signs of indicators such as living in groups in the dingy unsuitable places, such as in agricultural or industrial buildings, lack of protective equipments, long working hours, lack of basic training and professional licenses, subject to insults and abuses, no record of wages being paid or evidence of labour laws being breached.

Indicators to identify traffickers

It is also necessary for the investigating agencies to identify traffickers to combat this organized crime. The potential trafficker²⁰ can be a local pimp, intimate partners/family members, gangs and criminal networks, fake massage parlor business owners and managers, rich farmers and landlords in agriculture, labour brokers/recruiting agencies, employers of domestic servants, small business owners and managers, large factory owners and corporations, persons working in close proximity with the system.

VI Planning rescue

Pre rescue information can be through individuals like social workers, police informants, NGO's or institutional sources like local clubs. There may be anonymous calls or pseudonymous letters. It is thus very important to do planning of rescue and in doing so following steps has to be taken:²¹

- i. Verify and crosscheck the source before planning a rescue.
- ii. For rescue operations FIR filing is not required.
- iii The informant's identity should be kept a secret.
- iv. If victim themselves complain then an informed consent has to be taken from them.

20 *The Polaris Project* (2013), available at: <http://www.polarisproject.org/humantrafficking/overview/thetraffickers> (last visited on Nov. 22, 2020).

21 Immoral Trafficking of Persons Act, 1986, ss. 15 and 16, provides for rescue of victims and searching of the premise by special a police official appointed by the state government, before FIR is filed. Cr. PC s. 149 and 150 also provide for this.

- v. There should be a contingency plan as to where they would put the rescued victims if it were at night.
- vi. The police should also know who would be able to give them legal and administrative sanctions.
- vii. The logistics of the rescue has to be planned carefully in terms of how many women police personnel will accompany if they are raiding a brothel, where exactly the victims be placed as per the informant, what time the raid should take place, if the NGO is to be involved or not, how many victims are to be rescued and so on.
- viii. There are possibilities of danger, threat or being along with trafficked persons may carry illegally arms and ammunitions.
- ix. Think of a decoy operation wherein the decoy could be a police person, an NGO or anyone willing to be a decoy and would act as the customer to gather.
- x. All transit points have to be secured and monitored. Busses, trains, private cab's have to be checked and intelligence gathered.
- xi Information can be collected from massage parlours, barber shops, abortion clinics, hotels, tourist operators, illegal and legal factories, travel agents, drug dealers, placement agencies, help lines by NGO's, media reports *etc.*

Immoral Trafficking of Person Act authorize police personnel to arrest traffickers

According to section 14 (i) Immoral Trafficking of Persons Act,1986 (ITPA), arrest without warrant can be done by special officer or anybody acting under his orders and direction, under section 14(ii) arrest without warrant can be done by any subordinate officer when authorized in writing by special officer, and under section 14 (iii) arrest without written order of superintendent of police can be done by any police officer provided, he/ she is in a rank of sub inspector or above, believes that a delay will lead to destruction/ concealment of evidence, or, the offender is likely to escape, or, suspect that the person is giving a false name/ address *etc.*²²

Any notified police officer as stated above in, any police officer authorized to arrest as stated above can rescue any victim and arrest the suspect, any police officer of the rank of an sub inspector or above, specially authorized by any competent magistrate,

22 Adapted partly from US Department of State, 'Identify and assist a trafficking victim' (2013), *available at*: <<http://www.state.gov/j/tip/id/>> and partly from United Nations Office on Drugs and Crime, 'Online Toolkit to Combat Trafficking in Persons', 278, (2013) *available at*: <http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_6-4.pdf> (last visited on Nov. 20, 2020) *available at*: <http://www.state.gov/j/tip/id/> and partly from United Nations Office on Drugs and Crime.(2013), *Online Toolkit to Combat Trafficking in Persons*, 278, *available at* http://www.unodc.org/documents/human-trafficking/Toolkit-files/08-58296_tool_6-4.pdf (last visited Jan 25, 2020).

(Metropolitan Magistrate, Judicial Magistrate 1st Class, District Magistrate or sub Divisional Magistrate) under section 16, ITPA.²³

Rescue team should, where ever possible, be accompanied by a sub divisional magistrate (SDM), who is the implementing authority under the Bonded Labour System (Abolition) Act, 1976 and officers of the labour department, so that the Child Labour (Prohibition and Regulation) Act, 1986 may also be utilized wherever applicable.²⁴ Rescue team should, where ever possible, obtain a search warrant from the jurisdictional magistrate under section 166 Code of Criminal Procedure, 1973 (CrPc) if SDM is not accompanying. Since the SDM is the implementing authority under the Bonded Labour Act, any complainant including an NGO can approach the SDM for rescue/ identification.²⁵

VII Rescue

Technically the Department of Labour acts as a nodal agency for coordinating the rescue with the police as well as the task force and in their reintegration process as the trafficked children are primarily considered a labour issue. The focus is on removing children from the place they were rescued and prevent their future return to sites of exploitation. Since the child has gone through a traumatic experience, there is a need to have greater sensitivity towards their need and rights. Being a labour law issue, rehabilitation becomes tricky, so there is a need to have a protection perspective.

Children are never to be detained as per the rights-based approach of rescue and reintegration. It is also expected that they have a clear voice in the decision-making processes. This approach includes the health services provided to the children for their smoother and faster recovery from the trauma of exploitation with supervised access to educational opportunity, safe and supportive accommodation and broader poverty- reduction initiatives that could target prevention of the cases of human trafficking. This can also cater to the idea that the victims of trafficking are often easy prey to the entire trap given the hurdles of repatriation.

Steps to be followed in rescue²⁶

As a first step the source information has to be entered in the General Diary (GD) of the police station. It has to be seen that the anonymity of the source/ victim/ location is not compromised. The rescue plan should have details of location, entry and exit

23 *Id.* at 18.

24 United Nations office on Drugs and Crimes, 'Standard Operating Procedures on Investigation of Crimes of Trafficking for Forced Labour' 15, (2008) *available at*: <https://www.unodc.org/documents/human-trafficking/India_Training_material/SOP_-_Investigation_-_Forced_Labour.pdf> (Last visited on Dec. 20, 2020).

25 *Id.* at 15.

26 *Supra* note 24. *See also, available at*: <http://uphome.gov.in/writereaddata/Portal/Images/SOP.pdf>(last visited_ on Nov. 20, 2020).

points which has to be secured, ways and means of removing victims securely and preventing the disappearance of traffickers. The surroundings where the rescue will take place have to be reconnoitred and searched. Police person can be a decoy to gather information as also help from NGOs, empowered survivors, or anyone who want to help, be taken, provided the information remains confidential. After rescue, by which specific locations useful for ingress and egress can be seen and specific duties to the officials who will participate in the rescue can be assigned. This includes duties such as coordinating, guarding entry and exit points, locating the hide-outs, identifying safe place to keep the rescued persons till completion of the rescue operation, *etc.*

Rescue team should, where ever possible, be accompanied by a SDM, who is the implementing authority under the Bonded Labour System (Abolition) Act, 1976 and officers of the labour department, so that the Child Labour (Prohibition and Regulation) Act, 1986 may also be utilized wherever applicable. Rescue team should, where ever possible, obtain a search warrant from the jurisdictional magistrate under section 166 Cr PC if SDM is not accompanying. Since the SDM is the implementing authority under the Bonded Labour Act, 1976 any complainant including an NGO can approach the SDM for rescue/ identification.

Many rescue events go bad as people in the team are less. Thus there should be sufficient number of rescue team members especially women police personnel. The interview of the rescued person will be done separately by a police officer, preferably a qualified social worker or member of a local NGO, with ought the employer or agent. Help of NGOs should be taken to act as witnesses. Team should have at least one officer who is legally empowered to conduct rescue *i.e.*, a labour department officer authorized by the court or duly authorized by the magistrate.

A list of officials of labour department and NGO's working for human trafficking issues and concerns can be maintained area-wise. In case no non-governmental organisation is available, services of any government employee or panchayat representative can be sought. The role and requirements would be to arrange for materials and equipment required in the process of documentation of evidence while being collected from the site such as writing pad, white paper, stationery, boxes for transporting material collected from the premises or from the victims or the suspect, video camera, audio recording equipment, camera, first aid kit, and or any material needed on spot. Drinking water and light snacks for the rescue team members and the victim has to be arranged prior to the rescue process. The authorities that will permit the rescue of trafficked children need to be informed of the time and place. Before carrying out rescue, the NGO or government run homes have to be intimated on the number of rescued victims that need to be housed and fed. If there are adult victims, they should be segregated from child victim. Vehicles and escort for the rescued persons should be adequate and the victims at all times are kept segregated from the offenders.

While on rescue mission it is pertinent to rescue any and all victim irrespective of age. Talking to the victim and or survivor is an important task because it needs to be a step to calm down the victim and win confidence in terms of safety. It would be relevant to try and make the victim / survivor comfortable as soon as possible. Immediate efforts should be made to win the confidence of the victim as children are scared of the police and the employers often threaten many victims that if they don't work harder, police will arrest them.

This stage is very significant as it is here when the police come in direct contact with the victim. The attitude of the police can determine the further cooperation and relation between the child victim and them. Every rescued child be it labour with bondage, migrant, sexually exploited, have to be brought before the Child Welfare Committee (CWC) under section 32 of the Juvenile Justice (Care and Protection of Children) Act, 2000. In the instance where the child is under bondage, and they may be working under bondage with the entire family, they have to be brought before the SDM to get any further compensation as per the Act.

After the rescue operation is carried out, the child welfare committee can take any decisions with regard to the child, including the decision to release such children, as per the provisions of the Juvenile Justice (Care and Protection of Children) Act. In cases where children are found to be working in non-hazardous occupations or processes, provisions of the Child Labour (Prohibition and Regulation) Act should be invoked to ensure that the working conditions of such children are well regulated as laid down under the provisions of the Act. Action should be initiated against the defaulting employers for violation of the Act, including its regulatory features.²⁷ If the rescued persons belong to another state(s), inform the nodal police officer of the concerned state(s). Finally all relevant information should be uploaded in track child portal.

Post rescue

The anti human trafficking unit is required to follow these steps post rescuing the child victim/ survivor:

Firstly; they have to record statement under section 161 and 164 Cr. PC. The statement of the victim /survivor should be taken after they have stabilised from rescue operation. The place of statement should be where the child is comfortable and for this their home surrounding, if it is felt best, the child can give a statement there. They may even give two statements, which may not be collaborative due to fear or anxiety or when they cannot recall the events correctly. In such a case the IO should give reasons for

27 Vijay Kumar Sodadas, "Draft Protocol Prevention- Migrant Child Labour", *available at*: <https://www.scribd.com/document/17055091/Draft-Protocol-Prevention-Migrant-Child-Labour>(last visited on Nov. 20, 2020).

the change. The IO in his case diary,²⁸ should record their observations of the physical, emotional and psychosocial harm done to the victim/ survivor. This can also be recorded under section 161 Cr PC and under Evidence Act, 1872 section 14;

Proper medical check-up and its report will be annexed to the case diary and if asked by the defence, the same shall be rendered. In case of sexual exploitation as well, care may be taken to record the statement in camera and in a non-intimidating environment. The IO may make a prayer under section 327 (2) Cr PC²⁹ to this effect. Where required, help of counsellor or NGOs should be taken if the child is traumatised.³⁰

Secondly, age assessment is very crucial during a rescue operation. The children under 18 may under duress or coercion lie about their age. It is the duty of the IO to assess the age. The labour inspector may also refer the matter to the prescribed medical authority in the absence of a certificate ascertaining the age of the child.³¹ In the case of bonded labour, age is not crucial factor so during rescue, everyone under bondage should be rescued. The birth certificate, school certificate, ration card, or any other government document, which will determine the age, should be mandatorily collected by IO. Circumstantial evidence of age proof can be collected from neighbours or other rescued person. If there is any doubt about the age then it can be referred to the medical board.

Thirdly, production before CWC will commence under section 31 of the Juvenile Justice Act, 2015, if it is not a case of bonded labour in which case they are to be produced before the district magistrate if he or SDM were not part of the rescue team. If the rescue is at night then the duty magistrate can be approached. If no one is available then the rescued shall be taken to government or NGO run homes, which are duly notified³² or if notified homes are not available then any reputed NGO Homes. If nothing else is available then the IO will take the initiative to house the rescued in a hotel or safe home under the care of lady police if they're as well as an NGO or social worker. In no occasion will the rescued be detained in the police station.

Fourthly, medical check- up is mandatory after rescue. The informed consent of the rescued is very important. The girl child will be escorted by a lady police officer and examined by a women doctor under section 53 (2) Cr PC and in the absence of one; a female NGO will be in attendance.

28 Seen by the judge during trial and not the victim on his agents shall be entitled to call for such diaries under s. 172 Cr. PC

29 *Sakshi v. Union of India* (2004) 5 SCC 518.

30 UNODC, "Journey to Justice- Manual on Psychosocial Intervention" 19 (2008), available at: https://www.unodc.org/documents/human-trafficking/India_Training_material/Journey_to_Justice_-_Manual_on_Psychosocial_Intervention.pdf (last visited on Nov. 2020).

31 Child Labour (Prohibition and Regulation) Act, s. 10.

32 Juvenile Justice Act, 2015, s. 41.

Fifthly, home verification of the rescued child victim/survivor is very important. The IO can oppose through the prosecutor if a rescued is handed over to anybody before home verification report is received. The IO should help in finding out the capability of the parents to whom the rescued is to be handed over and if the case is otherwise then through the prosecutor he should move the magistrate to help to avoid any decision otherwise.

Sixthly, in restoration of victim/survivor, the police can play a proactive role by:³³ Ensuring that the victims are released to the appropriate person after due home verification report by moving the magistrate with a report to this effect; furthermore moving the Magistrate not to release the victim to fake or 'self styled' or abusive parents/ guardians; liaising, supporting and facilitating the NGOs which are carrying out the home verification; providing security to the victim/accompanying person/ NGO during transfer of victim; and facilitating the genuine parents/guardians to take custody of the child.

Finally, in rehabilitation of the rescued child under bonded labour, the IO can extend great help by proposing to the DM to extended benefits to the rescued wherever applicable.

VIII Prosecution conviction and prevention

Prosecution

The IO has a very important role in the process of prosecution. Since the IO has been on the ground and has monitored the whole process from planning the rescue, to preparing charges, he can update the prosecutor on what has transpired in the entire case as well as how the victim/survivor was treated and about their mental and physical and psychosocial condition so that the best interest of the child will be taken in account. IO can help in preparing the victim/survivor along with the help of the counsellor as well as NGO representative for testimony before the court or before the executive magistrate in case of bonded labour. The safety of the victim/survivor from the point of rescue to trial as well as post trial has to be ensured by the IO. If the offenders are acquitted or are granted bail but the situation is not conducive to such order or it would be a mistake to do so, then the IO can move the prosecutor to file an appeal. The IO can invoke through the prosecutor, the provision under section 437 (3) Cr PC if the accused violated the provisions of bail.

Under the provisions of section 441 A Cr. PC, the IO should ensure that the surety, who stands for the accused, gives all the details of the other traffickers or accused person he has stood surety for. If there are any threats to the rescued from the trafficker then the IO under section 195 A and 506 IPC, file an FIR and take up the investigation.

33 *Supra* note 24.

Post conviction

Even after the conviction of accused, work of the police does not end there. If the IO is of the opinion that the punishment was not sufficient *vis-a-vis* the crime, or if the accused has been convicted before on the same charges, he can ask the prosecutor to move to the court for enhanced punishment also for recovery of fine up to Rs. 20,000/- under the Child Labour Act, 1986 in the case of children. As and when the child rescued mentions the pay or the lack of it from its workplace, the IO will ensure that they get the backlog payment as per minimum wages. The attachment and forfeiture of unlawfully acquired property.³⁴ The convicted traffickers need to be prevented from indulging in further crime. Externment proceedings under the relevant laws in the states may be utilised. History sheets/ suspect sheets: police should open dossiers and keep watch on the activities of convicted persons and suspects. Wide publicity should be given to the convicted traffickers to create adequate impact on the offenders, alert the public and warn the vulnerable population.³⁵

Prevention

The AHTUs need to play a proactive stance in prevention of trafficking crimes.

- i. The IO can check the areas where there are vulnerable children who have a chance to be trafficked. To raise awareness by the help of the NGO amongst the child and their parents.
- ii. Prevention at the transit site like railways and roadways, bus stops.
- iii. Make a coordinated effort along with local people, NGO by creating a watch dog to keep a check over survivors/ victim to see that they are not re-traffic

IX Conclusion and suggestions

History is witness to exploitation, forced labour and slaves being trafficked from Africa centuries ago to child labourers being trafficked now in different parts of the world for domestic labour or in circus, or for sexual exploitation, as also for working in the factory. Strong laws with determined enforcement are required to act as a deterrent against the entire process of trafficking that leads to exploitation.

Trafficking is not limited to children but adults, especially women but children being more vulnerable and hapless are subject to extreme violations during and after trafficking. If the first point of contact being the law enforcement agencies exudes improper response it can aggravate the harm caused to them. Therefore, the response of the police has to be child rights oriented while constant impetus towards its eradication should be their goal.

34 Code of Criminal Procedure, 1973, s. 105

35 *Supra* note 24.

The Government of India has laid down many laws, protocols and SOPs towards minimising the problem of trafficking. The police in the AHTU are doing a yeoman's job, but in the end it has to be the efforts of not only the stakeholders in the society who have to work in tandem towards eradicating human trafficking, but the government should also see that there is adequate infrastructure, manpower and financial assistance, to help police in undertaking this task of fighting against human trafficking.

Suggestion for child friendly AHTU

A police station should have child-friendly environment wherein there should be a separate room with friendly look and should also sport a separate place for detaining children in conflict with law. There should be preponderance of trained female police looking at the sensitive type of cases, along with male counterparts to detect and stop such violence against children, investigate such cases with precision as also with patience and take prompt action against the accused. Sufficient planning, management and infrastructural as well as logistic support should be provided for the police to carry out their duties properly. Proper implementation of the existing laws should be ensured.

Police in order to function with enthusiasm and vigour, should be given incentives and awards for their performance. At the same time, they should be given exemplary punishment for their misdeeds. Police should encourage community networks along with women and children organizations so that when news violence against and children comes to light in the home and community, their support can be garnered and safe place for the time being for the traumatized child can be found. Separate monitoring cell should be established to monitor the activities of police.