

Child trafficking in India

By Melissa Martin

Trafficking in humans is a global phenomenon that affects the lives of millions, particularly women and children. Trafficking is a form of exploitation that violates numerous fundamental human rights. India is one nation where child trafficking is rampant. This State has been identified as a source, transit and destination point in the international circuit, as well as having large numbers of children trafficked domestically.¹ The trafficking of children occurs for reasons such as sexual exploitation, labour, marriage, adoption, and drug smuggling. The process of child trafficking usually occurs through organised networks within the local community, making the issue of combating trafficking complex and multifaceted.

Under core international human rights treaties of the United Nations (UN)² as well as national constitutions and human rights acts, individual states create administrative bodies to monitor human rights in general. The UN Human Rights Commission set out the standards by which national human rights institutions (NHRIs) under the Paris Principles developed in 1993.³ It

is widely accepted that national human rights institutions play a significant role in assisting the State to develop human rights-based approaches to domestic laws and regulations. There is a critical link between human trafficking and human rights, which makes NHRIs relevant in counter-trafficking measures, as they have a mandate to specifically combat the problem.⁴

Whilst there are numerous human rights institutions and networks working to combat human trafficking, this essay will focus largely on the effectiveness of the Indian National Human Rights Commission (NHRC) in combating child trafficking. In order to more effectively prevent child trafficking, the Indian government needs an appropriate domestic legal framework encompassing all international conventions related to trafficking and children's rights. The NHRC, as a governmental agency, needs to coordinate better with international and regional networks, as well as non-governmental organisations at a national and local level to ensure that the rights of the child are protected so as to ensure that inter- and intra-state trafficking is prevented.

Overview of child trafficking in India

It has been widely reported that India has an ongoing crisis in human trafficking. Indian government authorities and NHRIs have made uneven efforts to prosecute traffickers and protect trafficking victims⁵ due to its complex and widespread nature. The task is not simple as 378 out of 593 districts in India are affected by some form of trafficking.⁶ The main causes identified for trafficking in India are linked with economic, social, cultural, religious and geo-political factors.⁷ According to a study done in 2006, seventy-two per cent of human trafficking is for commercial sex and forty-three per cent of women trafficked are minors.⁸ This makes the issue of child trafficking significant, as well as the rights of all women.

The central governmental agency with a specific mandate to combat child trafficking is the National Human Rights Commission, situated in India's capital city, New Delhi. The Commission was created in 1993 to protect and promote human rights in India. Authorised under the *Protection of Human Rights Act* (1993), the

NHRC has developed major initiatives to: review laws, implementation of treaties, and international instruments on human rights; eliminate bonded labour and child labour Issues; protect rights of vulnerable groups; protect rights of women and children, and specific action research on trafficking.⁹ International and regional networks that have worked closely with the NHRC to address child trafficking problems in India include the United Nations Global Initiative to Fight Human Trafficking (UN.GIFT) and the Asia Pacific Forum of Human Rights Institutions.

All state human rights institutions are guided by international and domestic legislation that aim to protect the fundamental human rights of all citizens. There are a number of different international legal instruments that attempt to protect the rights of a child as well as prevent human trafficking. The significance of international law is effective only if incorporated into domestic legislation and then adequately enforced to ensure that the rights of children are protected and trafficking is prevented and offenders punished. Whilst there are many international conventions, treaties and protocols related to anti-trafficking and to children, India is yet to sign and/or ratify that majority of these instruments. India has,

however, developed some legislation implementing ratified international conventions. Evidently, State domestic laws are largely insufficient in protecting children against trafficking considering that India continues to be a well known transit hub for human trafficking.

International legal instruments relating to children and trafficking

The *International Convention on the Rights of a Child* (1989) was the first legally binding document to incorporate civil, cultural, political and economic rights for children, with core principals of 'non-discrimination; devotion to the best interests of the child; the right to life, survival and development; and respect for the views of the child'.¹⁰ Under international law, a 'child' is a human under the age of eighteen years, and therefore needs special care and protection that adults do not.¹¹ In 2002, the UN created an *Optional Protocol to the Convention on the Rights of the Child* on the sale of children, child prostitution and child pornography, in recognition of the 'significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography'.¹² India ratified this Convention in 1992 and the Optional protocol in 2005,¹³ meaning that India holds itself accountable

Photo: Dhyani Ji



for any breaches or violations to the rights of the child, and is obliged to make domestic laws that are in the best interests of the child.

Adopted in 20002, the *UN Convention against Transnational Organized Crime*, recognised the seriousness of trafficking as an organised crime that occurs both interstate and internationally. Supplementing the aforementioned Convention is the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children*, which entered into force in 2003 (the Palermo Protocol).¹⁴ This Protocol specified the first agreed upon definition of the 'trafficking in persons', being,

“...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.”

Additionally, the *Protocol against the Smuggling of Migrants by Land, Sea and Air*, another supplement to the *Convention against Transnational Organized Crime*, seeks to prevent and combat the smuggling of migrants, both children and adults. This Protocol is significant as it recognises that there is a problem of organised criminal networks that smuggle migrants, including children, and preventing their exploitation. Whilst India signed the UN *Convention against Transnational Organized Crime*, and its optional Protocols in 2002, it is yet to ratify these international treaties.¹⁵

Conversely, India has ratified the *International Covenant on Civil and Political Rights* (1966), and signed the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* (1984). Both of these legal instruments protect the rights of the child¹⁶, and should be enacted in domestic legislation to ensure that child trafficking is prevented, and that vulnerable children are protected. Finally, the International Labour Organization's (ILO) *Convention on the Worst Forms of Child Labour* (1999), stipulated the trafficking of children as

one of the worst forms of child labour, and calls for all member states ratifying the convention to 'take immediate and effective measures to secure the prohibition and elimination of the worst forms of child labour as a matter of urgency'.¹⁷ Whilst India is a member state of the ILO, it has not yet ratified this Convention.

Domestic legislation

Whilst India has failed to sign and ratify many significant international legal instruments protecting the rights of the child and against trafficking, there is domestic legislation that has been enacted pursuant to ratified UN Conventions.

The *Children Act* (1960) aims to provide for the care, protection, maintenance, welfare, training, education and rehabilitation of neglected or delinquent children and for the trial of delinquent children. This is particularly important, since children in vulnerable situations are the group most at risk of being trafficking, and often disappear into trafficking networks unnoticed. The Act operates as both a preventative measure to protect vulnerable children, as well as protecting their rights once arrested.

Similarly, The *Juvenile Justice (Care and Protection of Children) Act* (2000), was enacted to provide for 'proper care, protection and treatment' of children,

by 'catering to their development needs, and by adopting a child-friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation'.¹⁸ Under this Act, a child under the need of protection includes a child who is found vulnerable and is likely to be inducted trafficking.¹⁹ Although there are provisions for the prevention of child trafficking within this Act, the main terms relate to care and support after rights have been violated.

The *Child Labour (Prohibition and Regulation) Act* (1986), aims to prohibit the engagement of children in certain employments and to regulate the conditions of work of children under the age of fourteen in certain other employments. This is also another significant piece of legislation, since the majority of trafficked children are forced to work for little or no pay, violating their right to an education amongst many others. The ILO estimates that India has the largest child labour force in the world, with 2001 estimates at 12.6 million children aged between five and fourteen working.²⁰ This is a significant issue, as children who work are usually denied education opportunities, which is vital if the child trafficking is to be prevented.

The *Immoral Traffic Prevention Act* (1956), covers a wide range of offences punishable under Indian law. Child prostitution is a key area covered by this legislation, whereby any person found to be detaining a child for prostitution without their consent, has committed an offence²¹. The Act also ensures that children who have been rescued from trafficking situations are put into protective care.²² There are several major flaws with this Act however, in that it does not define 'trafficking' clearly. The Act does not provide comprehensive protection for children as it refers only to trafficking for prostitution. Furthermore, the Act primarily covers women and children in brothels; it does not cover other areas where child trafficking may occur, such as hotels, beaches, and guest houses.²³ Similarly, the *Suppression of Immoral Traffic In women and Girls Act* (1956) aims to punish those who run brothels, or premises used as brothels, and detaining girls or women for prostitution. The Act does criminalise trafficking and provide appropriate penalties. Both the aforementioned Acts are largely punitive rather than preventative, however can act as a deterrent if adequately enforced.

Whilst there are numerous international conventions and national legislation pursuant to ratified conventions in India, such laws are ineffective if not enforced and monitored by the States

in collaboration with NHRI's. Overall, the combination of all the aforementioned international and domestic laws aim to combat human trafficking by firstly protecting the rights of the child, secondly preventing trafficking from occurring, and lastly punishing those who do commit offences related to child trafficking.

In order to combat child trafficking effectively it is necessary for India to review current legislative measures in place and assess whether or not they are adequately addressing all the complex issues surrounding the serious violation of human rights. Ideally, India ought to ratify more key international Conventions and then enact domestic laws to ensure that anti child trafficking measures are effectively put in place and monitored by the NHRC in coordination with non-governmental organisations.

International and regional networks combating child trafficking in conjunction with the National Human Rights Commission in India

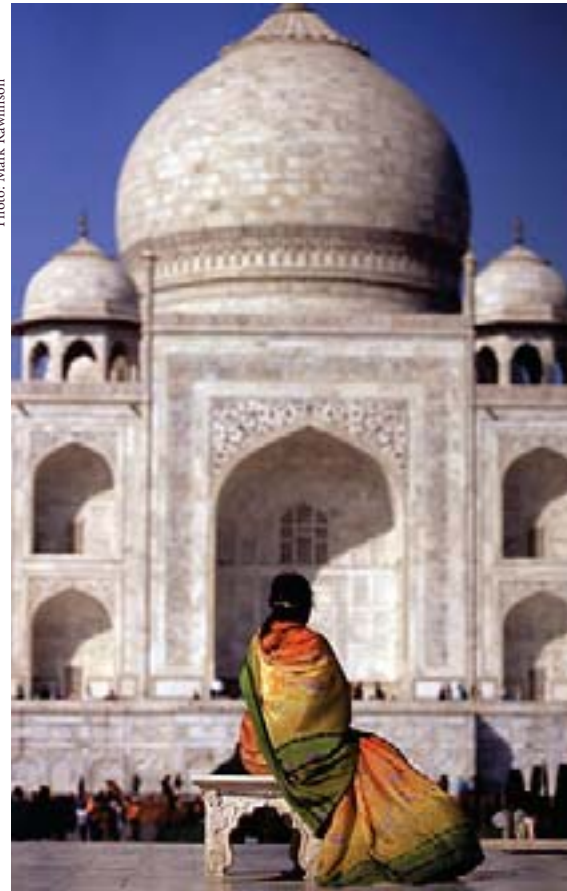
In recognition of the fundamental link between human rights and human trafficking, the UN Economic and Social Council produced some recommended principles and guidelines for states and intergovernmental organisations.²⁴ The principles cover the importance of human rights; preventing trafficking; protection

and assistance, and; criminalisation, punishment and redress. Guideline 8 specifically addresses the 'special measures for the protection and support of child victims of trafficking' in that children ought to be treated differently from adult trafficked persons in terms of laws, policies, programmes and interventions.²⁵

Following this, in 2004 the NHRC conducted Action Research on trafficking to identify the trends, dimensions, factors and responses related to trafficking of women and children in India.²⁶ The Action Research reviewed the implementation of laws and policies related to trafficking, where the NHRC focused on an effective rescue and post-rescue strategy, rather than addressing preventative measures.²⁷

In 2005, India produced the 'Impunity for Traffickers and to Secure Justice for Trafficked People' plan of action created after an Asia Pacific Forum workshop, which emphasised the need for a comprehensive human rights based approach to combating human trafficking in the Asia-Pacific region.²⁸

The Plan of Action identified five broad objectives, being the promotion and protection of human rights; the formulation of an appropriate legal framework; protection and support; prevention of trafficking, and; training, education and awareness.²⁹



In response to the plan of action discussed at the Asia Pacific Forum workshop, the NHRC produced a report outlining their own National Plan of Action for Human Rights in 2006, which identified children and bonded labour as an area of concern.³⁰ More specifically, the report highlighted the need for spreading awareness of human rights, and its support for workshops and training in all regions of the State to address combating trafficking of women and children.³¹ The NHRC also emphasised their efforts in urging the Indian government to ratify the Convention Against Torture, which is yet to be actioned despite a draft Bill to ratify the Convention by the Ministry of Home Affairs.³² The NHRC needs to increase efforts to push the Indian Government to sign and ratify significant international legal instruments that combat child trafficking.³³

More recently, on an international scale, the UN created a Global Initiative to Fight Human Trafficking in 2007. The Initiative was conceived to 'promote the global fight on human trafficking, on the basis of international agreements reached at the UN'.³⁴ According to its mission statement, UN.GIFT aims to, 'mobilize state and non-state actors to eradicate human trafficking by reducing both the vulnerability of potential victims and the demand for exploitation in all its forms' by ensuring sufficient

protection and support for victims, including the efficient prosecution of the criminals involved.³⁵ The protection of fundamental human rights is at the core of the Initiative.

UN.GIFT seeks to promote a human rights-based responses in partnerships for joint action against human trafficking, meaning that NHRIs are ultimately at the centre of the action to combat the issue. The Initiative specifically recognises South Asia as a region where trafficking in young women to brothels both intrastate and interstate is frequent. Countries in the region therefore created the Delhi Declaration in recognition that countries need a unified approach to eradicate trafficking.

Within the nineteen-point plan, the special protection of children was recognised four times; the Declaration seeks to protect against sex selection and violence against the girl child; reduce the use of child labour; recognise the role of youth as change agents and to promote education of the girl child, and; prevent brokers and intermediaries from indulging in trafficking for domestic child labour.³⁶ They realised that since there is a demand based supply for prostitutes and child labour, the only way to combat trafficking is to reduce that demand.³⁷ The UN.GIFT regional event for South Asia, also held in India in 2007, discussed fostering

partnerships to fight human trafficking, with a specific focus on trafficking for sexual exploitation.

Since the creation of UN.GIFT, the NHRC has sought to better coordinate with the region in addressing the common problem of the trafficking of women and children.³⁸ The Commission has also developed an Integrated Plan of Action to 'prevent and combat the trafficking of women and children' specifically, with a task force comprising of representatives from the Ministry of Labour, Ministry of Home Affairs, Ministry of External Affairs, Panchayati Raj, National Commission for Women, Ministry of Women and Child Development, UNICEF, representatives from NGOs,

along with the NHRC.³⁹ This is a positive step in attempting to eliminate child trafficking in India, and if monitored effectively we could see a reduction in the number of children trafficked in the State and within the South Asia region.

It is evident that the NHRC in India is well aware of all the international and regional networks aimed at combating child trafficking. The Commission also understands the importance of international laws created surrounding the issues. The primary concern is that the NHRC has a disproportionate focus on supporting victims of child trafficking rather than on preventative measures, and protection of vulnerable children. The NHRC needs to take a more proactive approach in convincing the Indian government to ratify international conventions and treaties that are then implemented in domestic legislation to combat child trafficking. Without such measures the approaches taken by the NHRC in conjunction with non-governmental agencies are fairly limited. ■

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