

## **CHAPTER IV**

### **INDIA'S GOVERNMENT INITIATIVE TOWARDS HUMAN TRAFFICKING ISSUE**

The high number of human trafficking in India with the position of India as the country of origin, transit, and destination to trigger the birth of civil society awareness to combat human trafficking. This concern has resulted in a demand for the India's Government to be more assertive in addressing human trafficking cases. In Chapter IV it will discuss about the India's Government policy in responding human trafficking issue.

#### **A. India's Government Policies**

Drawing strength from the Constitution of India where trafficking of human beings or persons is prohibited under Article 23 (1), the mandate for prevention and combating trafficking in persons has received significant attention from the Government. In view of the multi-faceted issues associated with trafficking, the task and responsibility to fight this crime cut across different Ministries/Departments and also State Governments as the subject of trafficking falls within the purview of both the Centre and State mandates.

India has reiterated its commitment to prevent and combat trafficking by being a signatory to the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime. In addition, India's government is also amending the amendment of the law can be seen in the India's Amendment Act 2013.

## **1. Ratification of the UN Trafficking Protocol (Palermo Protocol)**

The UN Trafficking Protocol or known as Palermo Protocol was formed because of the increasing concerns of the world's countries on human trafficking crimes and the difficulty of states in reducing the number of casualties and preventing the increasing crimes of human trafficking. This Protocol was created because there is no universal international instrument that can solve the case of international trade in all aspects.

This Protocol was adopted on 15 November 2000 and enacted as of December 25, 2003. The establishment of this Protocol was preceded by the General Assembly of the United Nations Meeting held in 1998, the Commission on Crime Prevention and Criminal Justice Meeting. At the time of the meeting, Argentina proposed a draft containing the establishment of a convention to address crimes against trafficking in children. The draft submitted by Argentina was also responded by all Member States present at the time with the expansion of the Convention, which refers to trafficking, but since 1998, trafficking in women and children was the highest, so the convention only directed to trafficking women and children. Discussions and negotiations on the draft of this Convention continued and were completed in October 2000 and on 15 November 2000 the UN General Assembly resolved the Conventions.

The formation of the Palermo Protocol has resulted in the protocol becoming the world-wide benchmark of the concept of human trafficking and everything else in it. This Protocol is the reference of a State in observing a case of human trafficking, as well as in the face of everyone who is victimized in this protocol. In accordance with the Palermo Protocol Chapter I Article 2, as for the purposes of this Protocol are:

- a. To prevent and combat trafficking in persons, and to pay special attention to women and children
- b. To protect and assist victims of trafficking in persons, full of their human rights.
- c. To enhance cooperation among Member States in order to meet these objectives.

As for the steps or ways taken to prevent or reduce the number of human trafficking in the world are:

- a. Member States that have ratified the Palermo Protocol must have clear steps in preventing and protecting human trafficking victims by including cooperation with organizations and NGOs, even through bilateral or multilateral relations with foreign countries. But the most important thing is that each State must strengthen its steps through education to the community, and even provide a good teaching on the social and cultural conditions that support the occurrence of human trafficking.
- b. Each state must have a legal firmness in this case, particularly in the immigration authorities and the parties in the government directly related to the case of human trafficking. In this case, the government should carefully look at the types of documents that used in and out of the state as well as detect any incoming transport within the state.
- c. The members of the Palermo Protocol should conduct special training for law enforcement officers, persons working in immigration offices and other officials in direct contact with the case such as the police and border guards.
- d. Each State shall strengthen its oversight within the border area through the examination of personal documents as well as inspections of transport that may facilitate human trafficking cases. In this case, there should be strong cooperation for the regulatory bodies at each border.

- e. National laws that have been established by the state may be enacted in the event of a violation of human trafficking and should consider the revocation of visas to persons involved in human trafficking mafias.
- f. Each state shall enhance its security by making immigration documents issued the best quality that is difficult to duplicate and in the process of making it must be accompanied by complete and precise data.

It echoes the strategy commonly known as the three P's: Protection, Prevention and Prosecution. State efforts are examined and measured through this strategic lens in the United States' annual Trafficking in Persons Report. Protection is victim-focused and concerned with providing a viable post-trafficking transition back to some sense of normalcy. NGOs that run shelters or provide post-trauma counseling all fall into the classification of protective activities. While, prevention relates to activities geared towards economic empowerment and education and awareness building, with the goal that would-be victims will not be as vulnerable to traffickers. And the last one is prosecution, which is prosecution regards activities focused on the criminalization of trafficking, implementation of anti-trafficking legislation, and the prosecution of offenders. The Palermo Protocol emphasizes prevention through measures in article 9 via a focus on alleviating socio-economic and other "push" or "pull" factors, measures in article 11 for the improvement of border controls to identify and interception of trafficking and measures in article 12 that address the need for security of documents issued by the state party.

India is one of the countries that joined the Palermo Protocol. India signed the Protocol on 12 December 2002 but ratified it on May 5, 2011. India took about 9 years to ratify the protocol, although in fact India is the

highest center of human trafficking in Asia, especially children and women which is increasing every year.

Although there are so many efforts that have been undertaken by the Indian government in addressing human trafficking issues, they have not been able to solve the human trafficking problem in India as evidenced by India's position on the TIER 2 Watch List in the United State Trafficking Report. The weak law enforcement of human trafficking cases in India is one of the causes of ineffective efforts by the Indian government.

In the span of 9 years, India experienced a significant dynamics in reducing the level of human trafficking in India. one of the factors that led India to ratify the Palermo protocol was the government's inability to reduce the number of human trafficking in India. Based on the Trafficking in Person (TIP) Report within the period of 9 years which is 2002-2011, India is very weak in enforcing the law of procurement. The Government of India through law enforcers is not strict in carrying out the existing legal process. Witnesses and sentences given to perpetrators are not consistent with the sanctions set out in the rules of the law applicable to Indian law. As mentioned above, India has laws that are particularly concerned with human trafficking especially in trafficking of women, commonly called Indian Penal Code (IPC). This law was issued as a form of effort by the Indian government to deal with trafficking cases.

The law that has been made by the Indian government if implemented properly will result in a significant decline in the number of human trafficking. But it can not be implemented well because of the two big reasons behind it, namely the existence of gratifications perpetrated by the perpetrators that cause the perpetrators to be directly protected by law enforcers, and the implementation of the law in India

that is often disobedient to the law. It is also a factor that led the Indian government to immediately ratify the UN Trafficking protocol.

In addition to the weak law enforcement of human trafficking cases in India, as for external factors that also affect. External factors are factors that originate from outside the Indian state that are urging the Indian government to ratify the Palermo protocol. The one external factor that causes India to ratify the Palermo protocol is the Trafficking in Person (TIP) report annually issued by the United States. TIP annually conducts research and data collection on human trafficking cases in every country. This research is derived from data directly taken in each country. In the period of 9 years ie 2002-2011, India experienced dynamics in human trafficking, due to the grouping of tier conducted by TIP, India in 2002 was set in Tier 2 but in 2004 classified in tier 2 WL up to 6 years in the future, but in year 2011 India is placed in Tier 2. In 2011, India is threatened to enter the Tier 3 in the human trafficking level. When a state is classified in Tier 3 it means that the state is unable to cope with human trafficking in its own country and does not even have a significant effort on the human trafficking case. A State if it is classified in Tier 2 then the State will be sanctioned unilaterally, meaning the sanction is imposed by the United States unilaterally in connection with cooperation between the two parties. The unilateral sanctions committed by the United States is a dismissal of aid either trade or humanitarian aid and will be punished in the form of economic sanctions. In addition to these sanctions, India will be punished with termination of assistance through the International Monetary Fund (IMF) also the World Bank and even the United States will unilaterally prohibit other countries if they want to exchange or even cooperation in social and educational.

The sanctions established by the United States was also made the Indian government pressed to make concrete steps on human trafficking cases faced by India. The steps taken are through India's ratification of the Palermo Protocol as a sign that India is unable to reduce the number of human trafficking in the country. India ratified the Palermo Protocol on 5 May 2011 and submitted each of the ratification documents on May 9, 2011. The Indian ratifying ruling of the Palermo Protocol was fruitful as it was able to raise India from Tier 2WL to Tier 2. This is due to the position of the United States which is one of the countries that holding the UN Veto rights. When India ratified the Palermo Protocol means that India also approved the steps that undertaken by the United Nations in reducing the number of human trafficking.

## **2. India's Amendment Act 2013**

India's government policy not only by ratifying the UN Trafficking Protocol in response to human trafficking cases but the government of India is also amending the amendment of the law can be seen in the Amendment of the Criminal Law (Amendment) Act 2013. The Criminal Law (Amendment) Act, 2013, is an Indian legislation passed by the Lok Sabha on 19 March 2013, and by the Rajya Sabha on 21 March 2013, provides for amendment of Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 on laws related to sexual offenses. The Bill received Presidential assent on 2 April 2013 and deemed to come into force from 3 February 2013. It was originally an Ordinance promulgated by the President of India, Pranab Mukherjee, on 3 February 2013, in light of the protests in the 2012 Delhi gang-rape case.

This incident generated huge international coverage and was condemned by the United Nations Entity for Gender Equality and the Empowerment of

Women, who called up the Government of India and Delhi “to do everything in their power to take up radical reforms and the like to make women’s lives safer and secure”. There had been a widespread demand by the public as well as various human rights groups and women’s organizations to change or amend the existing law relating to sexual offenses. A graver punishment for the accused was demanded for committing such a heinous crime.

Based on the demands made by the community, NGO, and PPB on the Delhi gang-rape case, the government of India is amending the Criminal Law Act 2013 with the provisions of a special article, namely article 370 and article 370 A with the provisions of the special article chapter 370 and section 370 A (Apne Aap Women Worldwide, 2013). This statement states that human trafficking as a direct crime and for the first time entered into the Indian Penal Code (IPC). Section 370 of Indian Penal Code (IPC) has been substituted with new sections, 370 and 370A which deals with trafficking of person for exploitation. If a person (a) recruits, (b) transports, (c) harbours, (d) transfers, or (e) receives, a person, by using threats, or force, or coercion, or abduction, or fraud, or deception, or by abuse of power, or inducement for exploitation including prostitution, slavery, forced organ removal, etc. will be punished with imprisonment ranging from at least 7 years to imprisonment for the remainder of that person’s natural life depending on the number or category of persons trafficked. Employment of a trafficked person will attract penal provision as well.

## **B. India’s Government Schemes and Programmes**

The Government of India is implementing a large number of programmes to protect vulnerable persons, especially women and children from trafficking, and



provide them economic and social empowerment. Some of these schemes are given below:

### **1. Ujjawala**

The Ujjawala is a Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation and ReIntegration of Victims of Trafficking for Commercial Sexual Exploitation, under the Ministry for Women and Child Development, attempts to provide rehabilitation services both immediate and long-term to the victims by providing basic amenities/needs such as shelter, food, clothing, medical treatment including counseling, legal aid and guidance and vocational training. The Ujjawala Scheme provides victims with funding to meet the travel costs incurred en route to being restored with their families, as well as “seed money” of 5,000 INR (roughly \$83) to each victim.

The scheme comprises 5 components:

- a. Prevention, which consists of the formation of community vigilance groups/adolescents’ groups, awareness and sensitization of key functionaries.
- b. Rescue, safe withdrawal of the victim from the place of exploitation.
- c. Rehabilitation, which includes providing safe shelter for victims with basic inputs of food, clothing, counseling, medical care, legal aid, vocational training and income generation activities etc.
- d. Reintegration, which includes restoring the victim into the family/ community (if she so desires).
- e. Repatriation, to cross-border victims for their safe repatriation to their country of origin

## **2. Swadhar Greh: A Scheme for Women In Difficult Circumstances**

Swadhar Greh: A Scheme for Women in Difficult Circumstances, also under the Ministry of Women and Child Development, represents another such programme (Mohan, 2017). The Swadhar Greh Scheme is meant to provide temporary accommodation, maintenance and rehabilitative services to women and girls rendered homeless due to family discord, crime, violence, mental stress, social ostracism or who are being forced into prostitution and are in moral danger. Beneficiaries of the Swadhar Greh Scheme include trafficked women/girls rescued or runaway from brothels or other places where they face exploitation. Both schemes, however, only apply to persons trafficked for the purposes of sexual exploitation.

## **3. National Child Labour Project Scheme (NCLP)**

The Ministry of Labour and Employment is implementing the NCLP, which is a project-based action programme. Working children are withdrawn from work and put into special schools for a period of maximum three years. In these special schools, they are provided with accelerated bridging education, pre-vocational training, stipend, mid-day meal, and health care facilities etc. A Central Monitoring Committee has been set up for the overall supervision, monitoring and evaluation of the National Child Labour Projects.

Respective State Governments have also been advised to set up State level monitoring committees similar to the Central Monitoring Committee. The Government is presently implementing the NCLP Scheme in 250 districts of the country and it is proposing to expand it to 600 districts in the Eleventh Plan. It has been observed that the social and economic status of the marginalized groups, especially those living in areas vulnerable to trafficking, needs to be

ameliorated so that they are no longer prey to traffickers. The Government is implementing a number of schemes for poverty alleviation and economic empowerment, which will go a long way in reducing the incidence of trafficking in the country. Some of these include special schemes for the protection of the girl child – the most vulnerable of all groups.

#### **4. Integrated Child Protection Scheme (ICPS)**

The Ministry for Women and Child Development has formulated an umbrella scheme called Integrated Child Protection Scheme (ICPS) with a view to provide a safe and secure environment for the overall development of children who are in need of care and protection as well as children in conflict with law, including children in difficult circumstances. The Scheme aims to improve access to and enhancement in quality of child protection services. The proposed scheme is submitted for approval from competent authorities. The objectives of the scheme is to improve the well being of children in difficult circumstances, as well as to reduce the vulnerabilities that lead to abuse, neglect, exploitation, abandonment and separation of children from parents.

#### **5. Anti-Human Trafficking Units (AHTUs)**

Anti-Human Trafficking Unit (AHTU) is the result of the formation of the government in cooperation with UNODC, a project undertaken by the government with the aim to reduce the number of human trafficking in India. IAHTU is a unit consisting of law enforcers, namely Police and Prosecutors. The government spent US \$18 million through the Ministry of Home Affairs concerning establishing 297 AHTUs in different places in 2008 until 2009.

The project has made remarkable progress and so far 290 training programmes have been carried out and 10, 194 police officials and prosecutors have been trained<sup>7</sup>. Integrated Anti-Human Trafficking Units (AHTUs) involving Government officials and NGOs have been set up and are functioning in the states of Goa, West Bengal, Andhra Pradesh and Bihar. A comprehensive scheme has been developed by the Ministry of Home Affairs to strengthen the law enforcement response to trafficking through “Training of Trainers” (ToT) programmes and by establishing AHTU.